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THE
H I S T O R Y
OF THE
BOROUGH
AND
MUNICIPAL CORPORATIONS
OF
THE UNITED KINGDOM,
FROM THE EARLIEST TO THE PRESENT TIME:
WITH AN
EXAMINATION OF RECORDS, CHARTERS, AND OTHER DOCUMENTS,
ILLUSTRATIVE OF THEIR CONSTITUTION AND POWERS.

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CONTENTS OF VOL. II.

EDWARD II.	577
STATUTES	477
FIRST YEAR BOOK	605
MIRROR	608
EDWARD III.	618
STATUTES	618
CHARTERS	629
PARLIAMENT ROLLS	667
NONE ROLLS	672
SECOND YEAR BOOK	676
MANUSCRIPT YEAR BOOK, THIRD AND FOURTH YEAR BOOK, LIBER ASSISARUM	678
RICHARD II.	714
STATUTES	714
PARLIAMENT ROLLS	729
CHARTERS	733
HENRY IV.	779
STATUTES	780
CHARTERS, &c.	783
SIXTH YEAR BOOK	803
HENRY V.	819
STATUTES	819
CHARTERS, &c.	822
PARLIAMENT ROLLS	829
SIXTH YEAR BOOK	831
HENRY VI.	834
STATUTES	834

CONTENTS.

CHARTERS, &c.	847
CORPORATIONS	857
PARLIAMENT ROLLS	892
SEVENTH YEAR BOOK	913
EIGHTH YEAR BOOK	933
EDWARD IV.	945
STATUTES	945
CHARTERS, &c.	950
NINTH YEAR BOOK	1010
PARLIAMENT ROLLS	1025
EDWARD V.	1032
RICHARD III.	1032
STATUTES	1032
CHARTERS, &c.	1033
HENRY VII.	1042
STATUTES	1043
CHARTERS, &c.	1049
ELEVENTH YEAR BOOK	1067
HENRY VIII.	1091
STATUTES	1093
CHARTERS, &c.	1119
EDWARD VI.	1145
STATUTES	1146
CHARTERS, &c.	1149
MARY	1177
STATUTES	1178
CHARTERS, &c.	1180
ELIZABETH	1218
D'EWES' JOURNAL	1223
STATUTES	1236
CHARTERS, &c.	1239
CASES, &c.	1432
CASE OF CORPORATIONS	1448

HISTORY

OF

CORPORATIONS.

EDWARD II.

THE weak reign of Edward II. is less productive of materials than the former, and less important in its results. 1307
to
1327.

We shall however proceed with the same division, and investigate successively the *statutes—charters*—and other public and local documents.

STATUTES.

The *statutes* at the commencement of this reign are few and unimportant.

The *articuli cleri* contain many provisions; but none material to our present researches. Articuli
cleri.

The statute of *sheriffs* exemplifies the jealousies at that time entertained respecting their conduct, and the complaints made of their oppressions; establishing the importance of those *exemptions* which the boroughs enjoyed from the inter- Sheriffs.

Edw. 11. ference of the sheriffs; and which they from time to time
procured from the bounty of the crown.

1316. In the 10th of Edward II., the statute of Gavalette is specially granted to the citizens of *London*;—the *freemen* of the city are mentioned; and the *hustings*—with the *presentments* there.

The legal periods of time, to which we have before alluded in our extracts from the Saxon laws, of the 40 *days*,—the *year* and a *day*,—occur frequently in these statutes. In the
1318. statute of York, 12th Edward II., chapter five, the bailiffs of franchises having the *return of writs*—and their returns to the sheriffs—are mentioned. The succeeding chapter speaks also of the officers in *cities* or *boroughs* having the *assise of wine and victuals*.

1324. In the statute as to the mode of doing homage and fealty,
Statute 2. the difference between *freemen* and *villains* is distinctly marked, and the oaths of each of them given;—the latter stating that “he will be justified by his lord, in body and goods.”

1325. The importance of the *view of frankpledge*, is marked by
Frank-pledge. the statute relating to it; which passed in this year, and contains *the articles of the frankpledge*—as follow:—

The Articles. “First, you shall say unto us by the oath that you have made, if all the *jurors that owe suit* to this court be come; and which not.

“And if all the *chief pledges or their dozeins* be come, as they ought; and which not.

“And if all the *dozeins* be in the assise of our lord the king; and which not; and who received them.

“And if there be any of the king’s *villains, fugitive, dwelling* otherwise than in the king’s demesnes; and of such as be within the king’s demesnes, and have not abiden *a year and a day*.

“And if there be any of the *lords’* villains in frankpledge, otherwise than in this court.”

Amongst these articles, are also contained those against common thieves, and their receivers:—the hue and cry re-

specting them—bloodsheds—and other felonies:—the assise of bread and ale—false weights and measures—vagabonds—and night-walkers:—All in perfect accordance with the Saxon and common laws;—and the same in effect, as the articles of the ward-mote inquests in London. Edw. II.

As we have before seen in the former statutes, that cities and boroughs have been mentioned; so here “*merchant towns*,” occur: as if they were distinct and separate from the cities and boroughs. So little substantial ground is there for acquiescing with Brady, that trade, and the merchant guilds, were either the foundation, or the real characteristics of boroughs. Merchant Towns.

In the ordinance respecting brewers, and victuallers, &c., the persons in whose custody the measures were to be kept, are described “*as lawful persons*,” and are to be sworn. And it is provided that no forestaller should be suffered to dwell in any town, who was an oppressor of poor people, and of all the *commonalty*. And for repeated offences he was to abjure the town, as we have seen a continuing offender was obliged to do by the custumals of the Cinque Ports.

From these statutes it is clear that the doctrines of *freedom and villainage continued in full use*; and the freemen here mentioned, are beyond all question, the “*liberi homines*” of the common law.

The distinct jurisdictions of the sheriffs and bailiffs of franchises having the return of writs, are clearly marked:—and the view of frank-pledge, with the juries and dozeins, were also preserved in all their integrity. And there can be no question, but that the term “*commonalty*” occurring in these statutes, was applied, not to any corporate body, but to the people at large, in the counties and in the boroughs. Commonalty.

CHARTERS.

In considering the charters which are to be found in this reign, we shall apply ourselves first to those of the city of *London*. In the 5th year of Edward II, we find a grant, reciting, that the *mayor and “good men”* of the city, having done great service to the king; he, willing to indemnify London. 1311.

Edw. II. them on that behalf, granted that such aids should not be prejudicial to the *mayor and "good men"*—their *heirs*, and successors; nor should be drawn into precedent for time to come. A precaution not unusual in those times, to guard against the consequences resulting from precedent, of which there is a similar instance relative to the Prior and convent of Canterbury.

1312. In the following year, the mayor and aldermen claimed their privileges, as granted by the charter of Edward I., and extending over the suburbs.

1316. The aldermen and citizens of *London* present their mayor to the treasurer and barons of the Exchequer.*

1317. In this year there was also a charter of confirmation to London.†

1318. Simon de Swanesland, the king's merchant, of London, obtained a grant,‡ exempting him from talliage, and from being mayor, sheriff, coroner, alderman, or other minister of the king; from which we see clearly the character of those several officers, all in fact coming under one general description of officers under the crown.

This brings us to the important period in the history of London, in which certain *articles* were agreed upon by the citizens, for the better internal government of the city, and common benefit of "*those who dwell therein*."§ They were submitted to the king for his confirmation—when he was pleased, amongst others, to ratify the following:—

1.—That the mayor and sheriffs should be elected by the citizens.

2.—That the mayor should remain only one year in office.

5.—That the aldermen should serve but for one year.

6.—That the talliaiges, after being assessed in the several *wards*, be not afterwards increased at the discretion of the mayor and commonalty.

It seems obvious, that these talliaiges could have been

* Mad. Fir. Bur. 63.

† See Yr. Bk., Trip. T. 45 Edw. III., fol. 26, B.; et Lib. Ass. B. 8 Edw. III., pl. 18.

‡ Mad. Exch. 750.

§ Strype's Stow, book v. p. 363.

assessed in the wards only, upon the *inhabitant householders*, Edw. II.
 who were the *proper suitors at the ward-motes*.

7.—That no stranger was to be admitted into the freedom of the city but at the hustings' court; nor any inhabitant, especially an English merchant, of mystery, or trade, unless by surety of six honest and sufficient men of the mystery he should be of, who were to undertake to indemnify the city in that behalf. That strangers who were members of any trade, upon being admitted at the hustings, should give the same security;—if they were members of no trade, then they should be admitted by the full assent of the commonalty. And all acting to the contrary, should lose their freedom. This article was declared not to affect the admission of apprentices, who were to be admitted according to the ancient form.

This article requires some explanation, as its having been misunderstood, has led to much error. The court of hustings Court of Hustings. was the general court of the city, and there *strangers* were to be admitted. For, not having houses within any of the wards, they could not be admitted as suitors at the ward-motes, within the precincts of which they could not, like the inhabitant householders of the ward, be known; and therefore the general court was to decide, whether they were fit and proper persons for admission.

There were certain mysteries, or trades, to which merchants belonged; and as the city might be rendered liable for the debts of the citizens, and that liability would be much increased by their being engaged in trade, it was provided, that inhabitants being merchants, should find six sureties of their trade, instead of two only, as the common law required; and strangers who traded, were to do the same. Other strangers were only required to find two sureties or pledges, in the common form. But as they were not of any trade, and therefore were without that proof of their being free, for none but freemen could trade, they could not be admitted without the consent of the commonalty, because it did not appear but that they might be the villains of some lord, or fugitives, for the taking of whom, the commonalty might incur liability; and therefore it was but just, that they should

Edw. II. have the power of giving or withholding their assent, before they incurred the chance of such a liability.

The exception as to apprentices, is to be explained upon the grounds to which we have before adverted, viz., that having served and resided more than a year and a day with their masters, who were not their lords, it was clear, they were not villains, and therefore were qualified absolutely, and to the knowledge of the commonalty, to be admitted as freemen.

8.—The eighth article provides against the colouring of the goods of strangers by freemen.

9.—The ninth provides, like the custumals of the Cinque Ports, that every one being in the liberty of the city, *i. e.* residing in it, who would enjoy the liberties of the same, must be in *lot and scot*, and partake of all burdens for maintaining the city; and whosoever would not, should lose his freedom.

10.—The 10th provides, that every one, being of the freedom of the city, and that by themselves or their servants, exercise their merchandises there, should be in *scot and lot*, with the commoners of the city, for their merchandise, or be moved from their freedom.

We should observe the difference of expression in these two articles:—in the former, the phrase is, “being in the liberty,” that is, “residing within the liberty;” the latter is, “being of the freedom of the city,” that is, one who, having been admitted and enrolled in the city as a freeman, continues to be a freeman, notwithstanding he goes to reside elsewhere; but he ceases to be one of the commoners, because he is no longer a householder in the liberty: still he would not be dealt with altogether as a stranger, if he came to trade in the place, because his name would have been entered on the rolls of the city, as a freeman; and instead of paying tolls and customs for his goods, he would, upon paying *scot and lot*, be exempt from those charges; but if he refused to pay them, then he would reasonably be treated altogether as a stranger, and as having renounced his connections with the city.

11.—The 11th article relates to the keeping of the common seal; but as we have before made observations respecting the seals, it is not necessary to repeat them here. Edw. 11.

Provisions follow, respecting the weights and scales, the collection of toll, and the direction of the sheriffs.

14.—The 14th article, following up the 10th, provides, that merchants who are not of the city, are not to sell wines or wares within the city or suburbs.

16.—The common harbourers in the city and suburbs, although they were not of the freedom, were to be partakers of the burdens of the city, as other like dwellers, on account of their dwellings; from which it is again evident, that the commons were householders in the city.

Provisions are also made, as to the brokers—the repairs of the bridge—and the conduct and duties of the serjeants, as to fees.

20.—The 20th article provides, that the goods of the aldermen, in aids, talliages, and other contributions, should be taxed by the men of the wards, in which those aldermen *abide*, as the goods of the other citizens by the said wards. From which it is evident, that the *aldermen, undoubtedly, resided in their respective wards.*

All these articles were ratified by the king to the citizens, their heirs, and successors, for the common profit of the city, and those that *inhabit therein*, and resort thereto. In the conclusion, the body of the citizens are described as the commonalty of the commons.

It is impossible not to remark the conformity of these articles, with the usages of Ipswich, Manchester, and the customs of the Cinque Ports, and as we shall see hereafter, in a much later period, with the customs of the burgage tenure borough of Maldon.

Mr. Norton, in his excellent commentaries upon the constitution of London, seems in this part of his investigation to have been misled by the reference to trade, which occurs in these articles, as well as in many of the charters granted to other places, and he states, that they contain the first authentic mention of what he terms “the mercantile con-

Edw. II. stitution of the city." He seems to have considered that a great change was effected in the constitution of London, by the introduction of a trading character into the qualification for citizenship, which he conceives to have been introduced by a great revolution in the quality of civic freedoms, which beginning in London, gradually overspread most of the corporations in England: the revolution consisting, as he supposes, in the destruction of the functions of the leet, and the substitution of the principle, and practice of the guilds.

But this assumption seems to be without proof, for there is nothing to establish by evidence this great revolution,—it is not apparent upon any of the documents or charters, relative to London, or any other place, many of which we have carefully investigated from the earliest periods. Indeed these articles seem to import that they were founded upon the ancient usages of the city, rather than that they were introductory of any new system.

And so far from the leets or ward-motes being in any degree superseded, they have continued in uninterrupted exercise of their functions down to the present day:—the truth is, that Mr. Norton overlooked the connection which existed from the earliest periods of our history, between trade, and the laws connected with free condition.

In the Saxon laws, we find the origin of the principle, that the person and property of a villain, belonged to his lord, and that doctrine continued uninterrupted as long as villainage existed. For it is expressly laid down, "that whatsoever a villain possesseth, is his lord's,* for which reason, the lord could not sue his villain; † nor could a villain have even an appeal of mayhem against his lord, for if he recovered damages, his lord would retain them."‡ Therefore if a person traded, it was prima facie evidence of his being free, and if he continued to do so for a year and a day, or was in any trading guild, fraternity, or mystery, for the same period, he was absolutely free, subject only as we have seen in Scotland, to his being reclaimed within seven years. Hence arose the

* Lib. Ass. 22 Edw. III. pl. 37., and 3 Hen. IV. 15. See Finch, 159.

† Jenk. 236.

‡ Lib. Ass. 27 Edw. III. pl. 49.

direct connection of trade with the acquisition of freedom, though it had nothing to do with the acquisition of citizenship, excepting, that it was one mode by which the previous indispensable qualification of being of free condition, was established. But it related no more to citizenship, than birth, marriage, or free tenure, all of which established the same precedent qualification of being of free condition;—it cannot be said to be connected with the peculiar doctrines of citizenship, but to be a part of the general law of the land. The truth being this, that a person born of free parents, or obtaining his freedom by marriage, or service incompatible with his being a villain, was a man of free condition wherever he was, but was not a citizen or a burgess, unless he was an inhabitant householder of the city or borough, paying scot, and bearing lot, and in order to make him *law-worthy*, or capable of enjoying the privileges of the place, being duly sworn to his allegiance, giving his pledges, and being enrolled in the court-leet, or ward-mote.

It is the more singular that Mr. Norton should have overlooked this connection of trade with freedom, and the above simple explanation which makes the whole harmonize, being the only sure test of accurate demonstration, because he has with so much learning and research, clearly and distinctly defined the general system of the ancient law, with respect to freemen and villains, and the laws of the court leet and frank-pledge; justly observing, that they were applicable to the whole people at large, and adopting all the above doctrine, excepting that which results from the connection of trade with freedom.

Mr. Norton, when he speaks of the title to admission into the companies by birth, patrimony, or apprenticeship, seems also to have overlooked the consideration, that these were equally grounds for satisfying the members of the guild fraternity or mystery, as the citizens and burgesses, that the person they were admitting was of free condition, and not a villain.

From a quo warranto of this date,* it appears that between St. Paul's and St. Bernard's Castle, there was a great field, in

1320.

* Rot. Lon. 59 Staunton.

Edw. II. which a large bell was set up, and when any one was to be outlawed for felony, all the folk-mote, that is all the citizens, came thither together, and he was proclaimed outlawed. Here we have the folk-mote called together, and outlawry according to the Saxon laws, acted upon at this time.

1323. In the same year, as well as in the 17th Edward II., letters patent issued respecting the repairs of London Bridge, which are not otherwise material to our investigation, than that they were granted to the mayor and commonalty, for the common good of the city.

1321. In this year, there was a grant to the aldermen and citizens, that they might nominate a citizen to be mayor;* and the earliest records now extant of the admissions of freedom, by service and otherwise, are in this reign; and the form is “admissus fuit in libertatem civitatis, et juratus.”†

Two aldermen were appointed to receive and determine the fines of foreigners residing and merchandising in the city,‡ who were to be admitted to enjoy the franchise if they were of sufficient ability;§ but it was expressly provided “that none were to be admitted into the liberty but by the “assent of the commonalty in full hustings,” which is repeated again in the 5th year of Edward II.||

In the 13th of Edward II. the consent of the commonalty seems to mean the consent of 12 men, or the jury from each ward.¶

An individual was put out of the liberties of the city, “and he and all his were declared to be *foreigners*, and never to be admitted without the consent of the mayor, aldermen and commonalty.”** This closes our extracts from the documents relative to the city of London.

University
of Cam-
bridge.

All the liberties and privileges of the town of *Cambridge* were confirmed, but providing that neither the masters nor scholars of the university, nor any of their liberties, should be prejudiced thereby.

* Rot. Pat. 4 Edw. II. m. 3.

† D. 8 to 36 D. p. 8. These Records are in the possession of the Corporation.

‡ D. 176.

§ Niger, 20 B. 203 B.

|| Niger, 35.218.

¶ E. 103.

** E. 154.

And also by another charter this king granted, that as long as it pleased him, all clerical causes contracted in the town (municipio) or suburbs of Cambridge, should be tried before the chancellor of the university. Edw. II.
1316.

This king gave a license to the University of Cambridge, by the name of "chancellor, master and scholars of the same university," that they, as assistants of the church, might acquire lands to the value of 40*l.* annually. 1320.

As a place of the next importance, we proceed to the consideration of the charters of *Bristol*. In the 5th year of this reign proceedings appear to have been taken against the mayor, bailiffs and whole commonalty of Bristol, because the mayor and bailiffs had received and applied to their own use the custom of wool.* Bristol.
1311.

A mandamus issued in this year to the mayor and commonalty of Bristol, directing them to restore certain persons whom they had disfranchised.† 1312.

Six of the most discreet men of the town, selected by the commonalty from among themselves, appeared at Westminster, to answer for a complaint against the commonalty of Bristol, for a contempt to the governor of the castle at Bristol. 1315.

The king, upon a fine paid, restored to the commonalty of Bristol the town, which had been seized into his hands; ‡ and a writ was issued to the custos of the town to deliver the liberty of the city to the commonalty; and to the sheriff of Gloucester to permit the *commonalty* to enjoy the *return of writs*:—which most clearly establishes, that the effect of a *seizure of the liberties of a borough was to give it to the jurisdiction of the sheriff*. 1317.

But a re-grant of the liberties put an end to the jurisdiction of the sheriff, and restored the exclusive jurisdiction of the borough. 1322.

The above restoration was followed, in the 15th year of the reign, by a confirmation of the charter of the 28th Edward I.

* *Mad. p.* 784.

† 3 *Dy.* 332. a.

‡ *Rot. Pat.* p. 1. m. 3.

Edw. II. We find also at this period some rolls relative to *Colchester*,
 Colchester. in the first of which it appears, that Colchester was an
 1311. hundred of itself, and that hundred courts regularly sat
 there, under the name of "Lagwe Hundred Courts," which
 were held before the bailiffs and coroner, and were attended
 by the whole commonalty.

It appears, from the entries in the books, that the meetings are described to be "in plenâ congregatione burgen-
 sium;" and that these law hundred courts were the court
 leet: because "the officers of the court are described as the
 "officers of the leet," and the jury are sworn in the manner
 usual in that court. The charge also is given of all the
 matters inquirable in the leet, and amongst others, of
 strangers coming to reside in the borough. But this court
 seems, after the introduction of the quarter sessions, and
 probably after the statute of the 1st of Edward IV., which
 took away the power of trying indictments at the leet, to
 have been merged in the general quarter sessions of the
 borough.

1313. In this year, a talliage was assessed upon the *boroughs* AND
 demesnes of the king in Cambridgeshire and Huntingdon-
 shire.* That upon Cambridge is assessed according to the
wards, of which there are seven named. There is a return
 of the talliage of the scholars of the university. Also of
 ecclesiastics (religiosorum), priors, prioresses, matrons of
 hospitals, abbots and abbesses, almoners, monks, brothers
 of societies. And the jury, 17 in number, return their own.

Chesterham, also, and its *juries*, make a return.

Saham and its taxors.†

Also Wytterham manor, which is the demesne of the king.
 And the return for Huntingdonshire is of the same description.

1325. A *special writ* seems to have issued for *talliaging Ring-*
wood, Christchurch, Westoure, Bourton, and Doneketon,
 which then appear to have been held of the Queen Consort
 Isabella,‡ reciting, that they were not ancient demesne, nor
 formerly assessed with the king's demesne lands—yet they
 had been lately so assessed and fined. It then proceeds to

* Mad. Fir. Bur. 59.

† Mad. Fir. Bur. 60.

‡ Mad. Fir. Bur. 61.

direct, that Domesday should be inspected, to see if they be ancient demesne, or whether they should be taxed with the *commonalty* of the county. And all but Ringwood, which was shown to be mentioned in Domesday as the king's demesnes, were exonerated from the fine put upon them. Edw. II.

We find in the Year Book of this period,* a case of the *burgesses of Salisbury* and the Abbot of *Baissestulle*, as to cattle seized by the abbot—damage faisant, as to a place called Portmarnepoise—upon which in a plea, it was avowed, that the *burgesses* of the town of Salisbury had common there—and it was claimed as appendant to their *BURGAGES*; but it was said, that it could not be appendant to a *burgage*, for a *burgage* is *nothing but a messuage in the town of the borough*. 1313.
Salisbury.

From this, we see what a *burgage* was:—and we have proof of *burgages* continuing in Salisbury to this time. And if this relates to New Sarum, which seems most probable, the observations we have before made on this point again apply.

In the last reign, we made numerous extracts from the documents relative to *Ipswich*: we have also occasion to refer to them at this period.

IPSWICH.

This king gave a charter to Ipswich, ratifying the former grants to them, their heirs, and successors—particularly reciting the charter of King John; and repeats the election of the *burgesses*, *by the common council of the town*, of two lawful and discreet men, to keep the borough—and discharges them from being presented at the Exchequer. The next clause also recites the former charters for the election of four lawful and discreet men, by the common council of the *burgesses*, to keep the pleas of the crown—and directs, that for the future, two only shall be chosen. 1317.

The charter then adds other privileges; and concludes with an exemption, for the *burgesses*, their *heirs*, and suc-

* Year Book, 6 Edward II. fol. 183.

Edw. II. cessors, from murage, pickage, &c.; and prohibits forestalling, &c.

Common
Council.

We have before commented on the above expression—*"of the common council"*—and have shown, that it relates not to a body having that name, but to the act being done by the common assent, or council, of the town—which is the sense in which the word is used in this document. As a further proof of it, we have an instance in the reign of Henry III., in which, in a return of members to Parliament by the bailiffs and commonalty, they use the terms themselves, that their burgesses are to consent to such matters as shall be determined upon by the *common council of the realm*—where it is impossible there can be any doubt as to the meaning of those words; and in the succeeding ordinances it will be seen, that the expression repeatedly used was "by common consent."

1319. The *men* of Ipswich are also charged with a fine due from them.

1321. At this period we find further ordinances of the burgesses of Ipswich, to this effect:

The aldermen, bailiffs, and *commonalty*, recite, that they *hold the town at fee-farm*; and that, by their charters, all wares and merchandises should be freely and openly sold in the town, without any forestalling. That, of common right, every burgess of the town, *who should pay scôt and lot to all the aids of the town*, should be equally entitled with any other person to buy such wares and merchandises; that they and their ancestors have been bound to maintain the franchises; nevertheless, divers of them acting contrary to the franchise, being *hosts* of the merchants, have sold the merchandise in secret places, of which the greatest part of the commonalty could not have knowledge—such *hosts* claiming a fourth part of such merchandise by reason of *hostellage*.

It then directs, that all goods should be freely and publicly sold, in the common place assigned for them—so that no *host*, *forestaller*, or other of the *commonalty*, should *inter-meddle* with them, or take *hostellage*; that every *scot and lot*

burgess should be at liberty to buy :—and any person acting Edw. II. to the contrary, should lose his freedom.

Provision is made for the *enrolment of purchasers*, and for enforcing the payment of debts. Persons acting contrary thereto, were to lose their freedom—and the same for forestalling.

The charter for the election of two bailiffs is then shortly Election of bailiffs. recited ; and that no day was appointed for the election,—by reason whereof, some of the commonalty, several times, by lordly usurpation and private covin, have, at their pleasure, elected, made, and supported such bailiffs, contrary to the common assent, who, by reason of their office, and lordly usurpation, have, in many ways, grieved, taxed, and excessively amerced the commonalty, keeping the amercements to their own use, to the impoverishment of the commonalty :—to check such lordly usurpations, maintenances, and covin, and to circumscribe the power and perquisites of office, it is directed—that the bailiffs should be elected by *common consent*, without such covin, every year, on Lady-day—so, by such certainty of election, *all the commonalty* may be there. That the bailiffs should have 10*l.* a year for their service, in silver, with the ancient customs of fish, herrings, onions, oil, jannet, and the fee of the seal of the bailiwick—6*d.*—for the seal in every case ; and should appear *no amercements*, unless in the presence of the chancellor, and two lawful men thereunto sworn.

That the bailiffs should bring no one into charge in the town, without view of the chamberlains.

That on the election-day of bailiffs, two of the most sufficient men should be chosen, by *common consent*, chamberlains, who should receive all esplees, issues, and profits—so that the king's farm, the fees of bailiffs, and all the ministers, might be *yearly* paid, and the expenses discharged without making *talliage*, or extortion, as right and reason require : and an account should be yearly rendered to the *community* in full toll-house.

A recital then occurs, that the *common seal* having been Common Seal. improperly kept, and frequently passed without the *common assent*, to the great burden and damage of the commonalty, four

Edw. II. of the most sufficient should be *yearly elected, by common consent*, to keep the four keys of the common chest, in which the common seal and treasure should be deposited—so that on the election-day of the bailiffs, the keepers of the keys should surrender them to the *commonalty*, to be re-delivered to them, or to others, at their pleasure: and that nothing should pass under the *common seal* without the *common consent*, and received in full toll-house.

Clerk of
the Courts.

That on the bailiffs' election-day, *one of the most good, loyal, and sufficient of the town, should be elected, by common consent, to the office of clerk of the court* and commonalty of the town.

Sub-
bailiffs.
Gaoler.

Sub-bailiffs and a gaoler are to be similarly elected, by common assent.

All chattels found upon thieves arrested, should remain in the custody of the *chamberlains*, until such persons should be convicted or acquitted of their *felonies*; and if convicted, to remain with the chamberlains, in the name of the commonalty, to the use of the king, when he should be called to answer for the same.

And inasmuch as heretofore the *bailiffs* of the town have, at their pleasure, without the *common assent*, made those they thought fit to *nominate*, (being of their comport,) *Burgesses*, *burgesses* of the town; and the moneys that such *burgesses* have paid for their *freedom*, which of right and reason ought to have been applied to the *common profit*, the bailiffs have, of their own accord, divided between themselves and others, contrary to right and reason. We will and 'ordain, for us and our *heirs*, that no *burgess* shall hereafter be made in the said town, *except four times in the year*—that is to say, at the *next great court* of the said town, holden after the *Feast of St. Michael*—and the next great court after *Christmas*—at the next great court after *Easter*—and at the next great court after the *Nativity of St. John*. That such *burgesses* shall be admitted and made *by common assent*—so that at the day *all the commonalty may come at their pleasure*; that the moneys arising from those fines, shall be confined to the common profit, and be talliaged by the chamberlains, and accounted for by them.

From these ordinances it appears that the burgesses were Edw. II.
to pay scot and lot; that every thing was to be done by the
common assent of the whole commonalty of the town; that
the bailiffs had been accustomed to make burgesses of them-
selves, but that this was prohibited for the future; that they
were directed to be made only at the four great courts to be
held after the four great quarterly feasts; that all the com-
monalty were to be at the court, (which establishes that
they were the courts leet,) and the burgesses were to be ad-
mitted, and made by the common assent. We should like-
wise observe, that although the last charter is granted to the
burgesses and their *successors*, these ordinances speak only
of the burgesses and their *heirs*.

There is also in this year a charter granted to *Nottingham*,
reciting that for certain transgressions which the burgesses
and commonalty had committed, the town and all its liber-
ties had been seized by the king, and had been retained in
his hands for three years or more. But the king willing to
show his grace to the burgesses and commonalty, re-granted
to them the town, with all liberties which the *burgesses*
and *men of the town* before had; to hold to them and
their successors, at fee-farm. That for the relief of the
burgesses and other men of the town, the king granted
that they might have in the town, one mayor out of them-
selves, whom the burgesses of both the *boroughs* of the
town, might by *common consent* elect every year, and as
soon as that election had been made, they might elect
one bailiff of one borough, and another of the other, on
account of the diversity of customs of the inhabitants in
the same boroughs.

This king also this year, confirmed the charter to *New-* Newcastle-
upon-
Tyne.
1318.
castle-upon-Tyne, of the 17th of King John, with all its
customs; that the *burgesses* should be free of toll, murage,
and in the usual form, from forced lodgings, and from
pannage, for all their merchandises, as well in the *Cinque*
Ports, as in every other sea port of his dominions. By this
charter also, the king extended the duration of the *fair*
granted by King John.

- Edw. II. In an inquisition on the death of William, Earl of Lincoln, lord of the manor of Canford, it was returned that the burgesses of *Poole* held a free borough, paying a fee-farm rent.
- Poole. 1311.
- Dorchester 1324. This king also granted at this time to the burgesses of *Dorchester*,* that they might have their town at fee-farm.
- Knaresborough. 1319. And the custody of the castle and honour of *Knaresborough*,† was granted for life at fee-farm to John de K.—
- Truro. 1311. From an *inquisition* after the death of Thomas de Prideas, of this date, it appears that the *bailiffs* of *Truro* were the officers who paid the rent due from that borough at the Exchequer; and the same inquisition speaks of the rents of assise of the free burgesses, and the perquisites of the courts there.
- So that it is clear at that time there was no mayor of Truro,—that the burgesses paid rents of assise,—and therefore may be assumed to be householders there,—that the courts of the borough were there held, including no doubt the court leet, and view of frank-pledge, to which we have before adverted.
- Carlisle. 1315. This king made some additions to the buildings of *Carlisle*, and in the ninth year of his reign,‡ committed the *custody of the city to the citizens*, granting them the city and mills belonging thereto, and royalty of Eden Water, at 80*l.* per annum; the liberty of building on the waste, freedom from toll; with markets, and a fair; likewise a *guild-merchant*, with *assise* of bread and beer, and trial of felons, &c.
- Taunton. We have seen that *Taunton* is mentioned in Domesday as a borough, and had then 64 burgesses.
1317. It is also mentioned as a borough in the pipe rolls of the manor of Taunton Deane of this date, preserved in Wolvesey House, at Winchester.
- Exeter. We also find that during this reign, Pierre Gavestone had, by the king's gift, a patent, for the *fee-farm* rents of this city, payable by the *citizens*.

* Rot. Fin. m. 12. 2 Pet. MS. 168.

† Rot. Fin. m. 9. 2 Pet. MS. 47.

‡ Rot. Cart. 9 Edw. II. n. 6.

As to *Shaftesbury*, it appears, that the *abbess* held a *court* every three weeks, on Wednesday, styled *Curia d'Abbatissæ*, as appears by several court rolls in this reign, as well as in those of Henry VI. and Edward IV.; and it is said in the *compotus* of the *abbess's* bailiff, to be held *infra portam abbathiæ*. The perquisites of it belonged wholly to the *abbess*. She also held another *court*, styled *Curia Legalis Fædorum Baroniarum*, within the jurisdiction of which, the *bailiffs of the manor of Tissebury, Hanleigh, Kingston, Compton, West Orchard, &c.* are said to be, and which seems to have been held every three weeks, for pleas of debt, &c. as appears by several court rolls in the reign of Henry VI. The perquisites of this belonged also wholly to the *abbess*. This court was probably peculiar to the manor and tenants of the abbey without the town.

There is also a roll in existence of the court leet held in this year. 1352.

Numerous charters of confirmation, which are to be found upon the Charter and Patent Rolls, at the Tower of London, were also granted during this reign, as to Lyme—Norwich—Beverley—Bath—Berwick-upon-Tweed—Cambridge—Canterbury—Carlisle—Christchurch—Gloucester—the Cinque Ports—Hythe—Sandwich—Winchelsea—Hereford—Kingston-upon-Hull—Lincoln—Liverpool—Lynn—Marlborough—Melcombe—Nottingham, 2—Oxford—Oxford and the university—Portsmouth—York—Retford—Scarborough—Shrewsbury, 2—Stafford and liberties—to the burgesses of Berwick.

And to afford the reader a short view of the state of a particular county at this period, and of the boroughs and hundreds within it, we shall add the following document with respect to Staffordshire.

In this year the king, by writ of his great seal, commanded the sheriff of *Shropshire* and *Staffordshire* to certify into the Exchequer what and how many *hundreds* there were in his bailiwick, whose they were, and *how many cities, boroughs and towns* in each hundred, and who were lords of them: 1316.

Edw. II. Upon this writ the sheriff made his return for *Staffordshire*, thus :—

In the county of Stafford there are five hundreds : the king is lord of each hundred.

There is one burgh, to wit, the borough of Stafford, of which the king is also lord.

The towns of Audeley and Betteley. Nicholas de Audeley is lord of them. (And so for other towns, in all 40.)

The Bishop of Chester, lord of Eccleshall and Heywoode.

John de Hasting, lord of Chewsey ; William de Stafford, lord of Souden ; Earl of Lancaster, lord of Newcastle.

Tamworth. By this return the *sheriff of Staffordshire* states, that there was only one *borough* in his *bailiwick*, namely, *Stafford*. It would therefore appear, that *Tamworth* was not then a borough.

This inference is strongly confirmed by a roll in the 18th of Edward II., by which it appears, that the *men* and *tenants* of the king, of *Tamworth*, render an account of 116*s.*, for the farm of half of their *town*;—of which the *primâ facie* import is, that it was not then a borough :—the *men*, *tenants*, and *town*, being expressly spoken of; and the former not being called *burgesses*, or the latter a borough. And if it was not then a borough, this document also shows, that holding at fee-farm was not confined to boroughs alone, but extended to all the towns held of the king.

And it appears not to have been treated as a borough in the succeeding reign, as there was of that date a charter granted to the *men*, and not the *burgesses* of Tamworth, of a market and fair.

Parliament
Rolls. There are also on the *Parliament Rolls* of this reign a few entries, which it may be material to notice.

1320. Thus as to *Hastings* and *Pevensey*, it appears, that the men of the former town state,* that the town of Pevenese, with La Lowe, was always a member of the town of Hastings, and in the same liberty, and in *lot and scot* with the town of Hastings; and they now claim to be independent.

Here we find a distinct instance of the payment of scot and

* Pet. Parl. n. 60, p. 377.

lot, as an assumed consequence of being within the liberties, Edw. II.
or rather used as evidence of belonging to the place, it
being apparently considered as the ordinary course, that
those who paid scot and lot, belonged to the port, and that
their doing so was proof of their appurtenancy.

Also the prior and convent of *Daventry** pray a grant Daventry.
of *view of frank-pledge* for them and their successors, in
the town of *Westhadden in Northamptonshire, of their*
own tenants, and of others who come to the market of
that town. An inquest, and a writ of *ad quod damnum*
ordered.

Daventry, although not a parliamentary borough, is now
a *corporation*, and continues the jurisdiction given above.

William Le Rous prays redress,† having purchased a tene- Villainage.
ment, and ousted out of it by a *writ of neifty* (or villainage);
from which it appears, that the doctrine of villainage was at
this time commonly acted upon.

The *commonalty of the county of Sussex*‡ complain, that Common-
alty.
outlaws are harboured within the liberties of the Cinque
Ports within their county.

Here we have the term commonalty (and the same occurs
afterwards as to Suffolk) applied to the body of the inhabi-
tants of the county, and that with reference to the reception
of outlaws contrary to the Saxon and common law.

The *abbot of Furness*,§ in consequence of the lives of many 1325.
Furness.
persons having been sacrificed crossing the sands to Lancas-
ter, prays to have a *view of frank-pledge*, and *coroners* of his
own; also *return of writs* within the lands of Furness. } 11

Here we have a petition for those privileges, which we
have so frequently had occasion to observe, were the found-
ation of exclusive jurisdictions.

The *commonalty of Suffolk*|| complain, “that the *chief* 1314.
pledges at leets and tourns of the sheriff, present men falsely, as
being guilty of articles of *leets* and *tourns* of the sheriff, when
they are not guilty; and *when the leets are held in the town of*

* Pet. Parl. n. 65, p. 378.

† Pet. Parl. n. 27, p. 374.

‡ Pet. Parl. n. 73, p. 379.

§ Pet. Parl. n. 24, p. 436.

|| Pet. Parl. n. 24, p. 293.

Edw. II. *which the sub-bailiffs* are, they procure themselves to be chief pledges in the leets, to make advantage of their mysteries, and the more to damage them who have grieved them," &c.

In this instance both the leets and tourns are mentioned as in full use.

1326.

As illustrative of the law and practice with respect to the levying of talliages upon the tenants in ancient demesne, and the mode of collecting the revenue from the other places in the county, not privileged or exempt from the sheriff's jurisdiction, the following document may be interesting.*

The men and tenants of the towns of *Sevenhampton*, *Stratton*, and *Heyworth*, in Wiltshire, complained to King Edward II.,† that although they were not of the *ancient demesne* of the crown, and were not wont to *be talliaged* in times past, or then lately, when *the men and tenants* of the king's ancient demesnes were talliaged, but had constantly hitherto contributed with the men of the *community of the said county*, to the common charges laid upon them; nevertheless, the assessors of the talliage imposed in the 32nd year of the reign of King Edward I., and also the assessors of the *talliage* imposed in the sixth year of King Edward II., did assess talliages upon the *men and tenants* of the said towns, just as if they had been of the *ancient demesne* of the crown, whereas they were not; and that the *sheriff* of the said county did now, by virtue of the summons of the Exchequer, intend to levy the said talliages upon the said men and tenants. Hereupon the king commandeth the treasurer and barons of his Exchequer, to search the rolls and memoranda of the Exchequer relating to the said talliages, and if upon search, it appeared that the said towns were not of ancient demesne, and that the men of the said towns were not wont to be talliaged with the men of the king's ancient demesne, then to acquit them of the said talliages.—The treasurer and barons caused search to be made, and in *Domesday Book*, the said towns were not found set down under the title of *Terra Regis*. But the town of *Sevenhampton* is there set down by the name of *Sevamentone*,

* 19 Edward II. Rot. 38 b.

† Mad. Fir. Bur. p. 5.

under the rubrick or title of Terra Willelmi de Ow : and the town of *Stratton*, under the rubrick of Terra Nigelli Medici. But nothing was found in the said book, touching the said town of Heyworth. Other rolls and records were also searched. And forasmuch as the court could get no information, that the said towns ought to be *charged with* the said *talliaiges*, it is adjudged that the said *men* be *discharged* thereof.

GUILDS.

That guilds were distinct from the municipal government of boroughs, and the brethren of the guilds separate from the general body of the burgesses, has been already urged from the clear language of the charters of King John.* It appears also from many other collateral facts, occasionally occurring in the history of the several burghs. 1308.

Thus in this year, it appears in a suit in the Exchequer, that William Sadler with ten others for the rest of the *poor burgesses* of their town, recovered 50*l.* damages of Nicholas de Carliol *and other burgesses of the guild-merchant* of Newcastle upon-Tyne.†

And in a document in this year,‡ one Robert Musgrave is described as a *merchant and burgess* of Newcastle-upon-Tyne. 1329.

That the term "guild" meant only originally the common payment made by the inhabitants of the several districts into which the country was divided, whether of counties, hundreds, cities, or boroughs, without reference to any idea of incorporation, is clear from this, that generally speaking, the part of the county not included in any privileged district, was called "the geldable." And we have seen the constant use of the term "geldavit" in Domesday, as applied to all the several classes of districts.

In this year also, we have a very distinct instance of the use of the word in this sense.—Thus the king being about to grant that *Frampton* in Gloucestershire should be a free borough, directs by writ of *ad quod damnum*, that it should 1308. Frampton.

* Mad. Fir. Bar. 95.

† Vide Mad. Fir. Bar. 95, 96.

‡ 4 Rym. Fœd. 382.

Edw. I. be inquired to what the aforesaid town is "gildable" to the king, and what it renders with certainty.

Before we altogether quit the documents of this period relative to England, it may be expedient to observe, that there were during this reign, several boroughs added to the number of those which returned before; as Grinstead—Melcombe—Hull—Weymouth—Retford—Tavistock—Cricklade—Okehampton—and some others.

1321. And we should add, that this king also took some pains for the digesting, arranging, and preserving the public rolls,* and other writings in the great public depositories of the Exchequer, and the Tower of London; directing the treasurer and barons of the Exchequer to employ proper persons for that purpose, and suggesting that they were not at that time disposed in such a manner as they ought to have been, for his and the public service.

1323. And in the 16th year of his reign, made a similar order for all charters,† and other muniments touching his state and liberties in England—Ireland—Wales—and Scotland. Two persons being appointed to examine and methodise them.

SCOTLAND.

Notwithstanding the directions given by the king for the preservation, amongst others, of the records of Scotland, we find no charters to illustrate our subject in this reign. Scotland, the scene of frequent wars, and its prince engaged in contending for his crown, afforded little opportunity for advancing the arts of peace, or regarding the municipal government.

This is however the period in which, in imitation of what had before taken place in England, Robert Bruce first admitted burgesses into the Scotch Parliament.‡

1326. And in the same year, a statute was made concerning recent deforcement in boroughs, (analogous to our writs of novel disseisin,) which is to be found in the 135th chapter of the *Leges Burgorum*.

* Aylf. Int. Cal. Cart. Ant. xxvi.

† Ib. 26.

‡ 1 Aberc. 635.

Edw. II.

WALES:

With respect to the Principality of Wales, it will be apparent that the same uniformity with the English boroughs, continued in the Welsh boroughs, in this as in the former reigns, from the charter to *Cardiff*, granted by Edward II., in his 17th year, as appears by inspeximus of that charter, by a confirmation of it in the 33rd of Edward III.,* and which granted to Hugh le Despenser the younger, that he and his heirs, and their burgesses, and other men and tenants of *Kaerdiff*, *Uske*, *Kaerlion*, *Newport*, *Coubrigg*, *Neethe*, and *Kenefeke*, for all their things, and goods, should be quit for ever of toll, murage, pontage, &c., and all other usages and customs, except the customs of fleeces, skins, wool, and wines.

1324.
Cardiff.

There was also in this year, a confirmation to the borough of *Camarthaen*.†

1313.
Camar-
then.

IRELAND.

Edward II. also granted a charter to *Dublin*,‡ in which he recites, that for the laudable services which the mayor and citizens of Dublin and their ancestors had rendered for the preservation and defence of their city and the parts adjacent, against the hostile assaults of the Irish, who strove to invade his lands and those of his liegemen therein, and to oppress and plunder his people; ceasing not at immense expence and labour in rendering and exposing their persons and properties to divers perils;—and that they might be able to apply themselves more peaceably to their trades and commerce, granted to the *mayor and citizens*, that they, their *heirs and successors*, *citizens of the city*, be not *impannelled on juries*, for holding any inquisitions, which on account of their extern lands, or on account of trespasses, &c., or other extern affairs whatsoever, might arise before the king's justices, or other ministers, while they resided within the city; that *extern men* be not *impannelled with the citizens on juries*; unless the matter

1314.
Dublin.

Grants.

* Rot. Cart. 17 Edward II. n. 25.

† Rot. 6 Edward II. n. 6.

‡ Confirmed by Edward III., in the 37th year of his reign.

Edw. II. concerned the king, or his heirs, or the *commonalty of the city*; that the *mayor and citizens*, and their *heirs or successors*, upon any appeals, &c., within the city, be not committed by foreigners, but only by their fellow citizens; unless the matter concerned the king, or his heirs, or the *commonalty of the city*. That they be not accused in any plea of *miskinning*. That they be not made sheriffs, coroners, controllers, or other bailiffs, or ministers of the king, or receivers of his moneys without the city, contrary to their will, *while they reside within the city*; and no *justices, bailiffs, or ministers*, should take aught of their goods or merchandises, against the will of the owners of such goods and merchandises, unless in the king's presence, for his use; or for the fortifying of the castles in the aforesaid parts, when, from any causes, it should become necessary to fortify them. That they might have the *assise of bread and beer*; the custody and assay of measures and weights, and of all other matters whatsoever appertaining to the affair of a *market* in the city, for ever; so that the *clerk of the market*, or any other minister might not enter the city, except only to oversee, approve, and examine the standard of the city; and to correct defects, found in the standard. That all advantages arising from this kind of assise and assay in the said city (the standard excepted) might belong to the *mayor and citizens, their heirs and successors*, in aid of their rents of the city; saving nevertheless, that if any person should make complaint that the mayor and bailiffs were negligent in performing the premises; then the king's justice in the land, for the time being, by himself, or by any other person, whom he should depute for that purpose, might, at the suit of such complainant, look into the matter on which such complaint be made: and if he lawfully find the mayor and bailiffs negligent in the matter, that he then cause it to be redressed, as is meet, and duly punish the mayor and bailiffs, reserving the fines and amerciaments of the mayor and bailiffs on this occasion; and the penalty of that, which by the said justice, or his deputy, should happen to be laid as aforesaid to the king. And also granted that the *mayor and citizens, their heirs and successors*, might for

ever be free from *murage, pavage, pontage, &c.*, and from all Edw. II.
other such like customs.

From this charter it is evident, that the same privileges were granted to the city of Dublin, as we have before seen in the numerous charters to the English boroughs ; and that the enjoyment of the privileges depended, by the express words of the charter, upon residence in the city ; and that the substantial foundation of the city rights, was the local jurisdiction excluding the sheriff, and the other officers and ministers of the crown.

A second charter was granted to Dublin in the tenth year 1316.
of this king's reign, giving to the citizens a confirmation and exemplification of King John's charter ; but to which it is not necessary for us further to refer, the charter above sufficiently establishing the only point material for consideration.

In this same year, Adomari de Valence, Earl of Pembroke, 1314.
Wexford.
and lord of Wexford, granted to his burgesses of *Wexford*, that they should not be bound to answer for any plea, which should happen within the bounds of the borough, in the castle, or elsewhere, except in the hundred of the same town. That they should be quit of toll, and all customs. That they should not be amerced, except by consent of the hundred, with the other usual clauses as to miskenning, distraining for debts, and the selling of cloth and wine by retail, except with the consent of the superior and commonalty.

This charter, it will be perceived, distinctly shows, that the castle of Wexford was, as we have observed before with respect to the English boroughs, distinct from the borough ; and the exclusive jurisdiction is also established.

Cork received an important charter at this period, which 1318.
Cork.
commences by reciting, that the citizens had, in times past, elected every year one of themselves to be mayor, who took his oath of office to the one who next preceded him, before the *commonalty* of the city, &c. But that the citizens had been molested in the king's courts, by the assertion, that such an oath ought to be made not elsewhere than in Dublin. That, in consequence of the distance of the city of Cork from Dublin, the violent insurrection and riot of the Irish people,

Edw. II. *there had never been free access from Cork to Dublin, nor would there be for the future.*

The king therefore granted, that the mayor should in future take his oath as had been accustomed. That the citizens, their *heirs* and successors, citizens of the city of Cork, might for ever have the *return of all writs*, as well by summons as attachments, of all and every the things arising within the city, and the suburbs thereof. So that the king's ministers of Ireland should not meddle with the summons or attachments, or the executions of any things arising within the city, or the suburbs thereof, except for want of a mayor and bailiffs, and for four pleas—viz. of rape, house-burning, forestalling, and treasuretrove, if in the city, or the suburbs thereof, they should happen. And of any things arising within the city, and the suburbs thereof, that were not by foreigners, except only such as agree thereto, unless the thing might touch the king, his ministers, or the *commons of the city*.

That they should be free from murage, paviage, carriage, and quayage; that they should not be put in assises, juries, or recognitions, to be taken on account of their lands and tenements lying without the city, or the suburbs thereof—so long as they *resided within the city*, or the suburbs thereof,—that they might the more quietly attend to their affairs and merchandises. That recognizances might, in the Court of Chancery of Ireland, be executed of the lands, tenements, and rents within the city; and that their recognizances have such force as such recognizances made of lands, tenements, and rents, in the city of London, have had; that the mayor and bailiffs of the city might have the assise of bread and beer, and the assay of weights and measures, in the city and suburbs aforesaid—so that none of the king's ministers of Ireland should intermeddle therewith, except it be in the presence of the justices of Ireland, or lieutenants of the same land, being within the city, who, on complaint being made of the want of keeping the assise and assay, might, on supervising and examining the same, punish all transgressors that they found, in such manner as should be fitting—excepting that the officers

of the markets in the land, if they were willing, once every year, might enter into the city, and the suburbs thereof, and might do and execute, as requisite, all such things as there belong to the office of the market. Edw. II.

And there was also a charter granted to the citizens of Waterford.* 1309.
Waterford

This closes all that is necessary for us to add in this reign as to Ireland. It only remains for us to make some few extracts from the important law treatises which are attributed to this period.

YEAR BOOKS.

A few extracts, relative to the subject of our researches, should here be added, as an introduction to the treatise of the Mirror, from which we shall hereafter make quotations; as also for the purpose of establishing, that, although many of the cities and boroughs, with their usages and customs, are mentioned in these records, there are no indications of their being corporations, which is strongly contrasted with the appearance of corporate principles, with respect to the ecclesiastical establishments.

On the roll of this year, there appears to be an exception of villainage. 1309.
Fol. 51.

And a plea for forestalling in the city of London upon the statute, at the suit of the commonalty—the defendant having bought goods for a certain sum, and sold them for twice as much; and it was adjudged, that nothing should be taken by the plea, and the commonalty were in mercy. Fol. 55.
London.

It is entered, that the Bishop of *Salisbury* brought his writ of nuisance against the commonalty of the vill; because they had wrongfully set up a fair, to the injury of his fee-farm in the town. 1310.
Fol. 96.
Salisbury.

It was answered, that to have a fair was a realty; and that the bishop, being a religious person, could not claim by purchase. And it was also pleaded, that Salisbury was the king's city.

* Rot. Cart. 2 Edward II. n. 3.

Edw. II.

The commonalty set forth a charter, granting them a fair—from which it is clear, that the conflicting interests and jurisdictions of the bishop and city, were even at this early period, brought into opposition—which appears again, in a replevin brought by the burgesses, in Michaelmas Term, the 8th of Edward II., where they claim common appendant to their "*burgages*," *which are alleged to be nothing more than a house in the town of a borough*. And the same question arises again, in Trinity Term, the 7th of Edward II., where Salisbury is described as the borough of the king. And although these records of Salisbury are numerous and long, there is no mention of its being a corporation.

1310.
Fol. 102.

Lynn.

In four replevins, brought by four persons separately, the Bishop of *Norwich* avowed, upon a custom, that he was lord of the town of Lenne, in which there was a custom, that the *commonalty of Lenne* ought to come to the court of the bishop, on the Monday after St. Michael, there to elect one of themselves, by whom they would answer to the provost of the bishop, to levy his rents and esplees of his manor. That the bishop had seized the cattle of two individuals, as tenants of the commonalty of Lenne.

Common-
alty.

It was urged, that this was not, like a custom, regarding each person separately; but it is to a commonalty as one body—in which case, they can only proceed by distress.

Here we have a direct reference to a commonalty as an aggregate body; but it is not mentioned as a corporation—which could hardly have been avoided, if there had been any pretence for so treating it at that time. This, therefore, seems a strong proof and confirmation of what we have before adduced, to show *that there were no corporations at this period*: for this is a long record, and states fully every thing respecting Lynn,—as, that a predecessor of the bishop's had granted to the town of Lynn, the franchises and customs which the citizens of Norwich had;—and that, in the time of King Henry, the commonalty were discharged of the custom and election—*so that the provost was to be elected on the part of the bishop*.

The absence of all reference to any corporate character of

the commonalty, or allusion to their successors, is the more striking—because the predecessors of the bishop are repeatedly mentioned. Edw. II.

In a long record respecting the Abbot of *Battle*, the bailiffs of the *Cinque Ports* are mentioned; and that a place called Digmar was a member of the manor of Romney, which is one of the *Cinque Ports*. That all who were in the precinct of the five ports, ought not to plead but at Shepway. The record then alleges, that the two persons who are mentioned, were resident in Digmar, and demanded the franchise, which had been granted by King Edward, that they should plead at Shepway, and not elsewhere. 1311.
Fol. 159.

Cinque
Ports.

Here again there is no mention of the *Cinque Ports* as incorporated, nor of their successors, although the predecessor of the abbot is spoken of; and the claim of the privileges here demanded is expressly upon the ground of *resiancy*.

One avows, as bailiff of *Southampton*, which is stated to be held in fee-farm of the king, to pay at the Exchequer, 4*l.* and 40 marks per annum; and that all those who came to the town to sell or buy, ought to pay toll, if they were not enfranchised. The complainant was said to be a man of the bishop's, all of whose men ought to be quit of toll, of what things they purchased. But if they purchased nothing, but sold, they ought to pay toll, as other people. 1312.
Fol 192.
South-
ampton.

Another instance of the freedom from toll, claimed by the *men* of the bishop, as *belonging to the church*.

In the 12th of Edward II., we find an instance of a writ of Neifty being brought; and another in folio 358. 1318.
Fol. 57.

Certain tenements were demanded in different towns, some of which were the franchise of Ely; and the bailiff of the franchise came and demanded the franchise. 1319.
Fol. 400.
Ely.

In the 15th of Edward II., the master of an hospital brings a writ, claiming certain tenements—and alleges, that the defendant had no title but through his predecessor, who had leased to him without the consent of the brothers, &c.; but it appeared that they had no common seal—and it was held that the assent was not necessary. So that, although 1321.
Fol. 443.

Edw. II. the religious bodies certainly at that time had many of the appearances of corporations, yet, from this record, it seems clear, that the doctrine of corporation was not then generally known, nor its results much practised. And here the consent of the whole, even of a religious body, was held not to be requisite.

1323.
Fol. 523.

The common seal of a prior is subsequently mentioned, as well as his predecessors, and with the consent of the convent he grants the tithes; and it is added, that what the prior demanded was in perpetuity. So that this doctrine of perpetual succession, with respect to religious houses, was then entertained, and doubtless gave birth to the statutes of mortmain, as applicable to those bodies; but it does not appear that the same doctrines were applied to the municipal corporations.

THE MIRROR.

In the reign of Henry II. we have extracted and commented upon the early compilation of our common law, which passes under the name of the "Justiciary Glanville."

In the reign of Henry III. the compilations of "Bracton" and "Britton."

In the reign of Edward I. we find a treatise called *Fleta*, and to the present reign is attributed—whether justly or not may be questioned—the "Mirror of Justices," purporting to have been originally written in the old French, before the Conquest, but edited by Horne, the chamberlain of London, as it is said, in this reign. It is, however, evident, that a considerable portion of the work is of great antiquity, although it is equally clear, that many passages in it are of modern introduction.

Cap. 1.
Sec. 1.

The parts material to our inquiry are probably of very early origin, and may with safety be ascribed either to this or an earlier period; for instance, in the 2d section of the 1st chapter, the division of the country into centuries or hundreds, and that to every century there was a centiner or hundredor, is stated; and this unquestionably belonged to the earliest periods of our history.

In order to illustrate the positions we have before urged, Edw. II. it is here material to note, that every centiner or hundredor had assigned to him his part by metes and bounds, which he was to keep and defend. Clearly establishing the principle of local jurisdiction, to which we have so frequently referred; and which is so important a clue to unravel the intricacies of our modern corporation law.

The chapter proceeds to state, that these divisions in some places are called *hundreds*, according to the original number of the persons contained in them:—in other places, *tithings*, according to the English phrase:—and in others, *wapentakes*, the Saxon term for the taking of arms. And it is added, that “by these divisions, peace, which consisted in charity and true love, was kept and maintained.”

In the 3d section of the same chapter, it is stated, that the Sec. 3. tourns of sheriffs, or views of free-pledges, were ordained; which explains the passage we have seen in many of the charters. It was likewise directed, that none of the age of 14 years or above, was to remain in the realm above 40 days (a period frequently mentioned in this compilation), if they were not first sworn to the king, by an oath of fealty, and received into a decennary.

In the 9th section of the same chapter, the different cus- Sec. 9. todies in which persons might be placed are enumerated, and amongst them men of religion in the custody of the abbots—villains in the custody of their lords—which explains the reason why they were not respectively liable to do suit at the court leet, because they were in the custody or manupast of the abbots and lords.

In the 10th section, the holding of the sheriff's tourn, and Sec. 10. views of frank-pledge, once in the year, is mentioned.

In the 13th section, the coroners are directed to inquire Sec. 13. in what pledges criminals were, or of what decennary, or of whom mainprised, and in whose ward. The pannels of jurors for coroners are directed to be of decenners; for coroners at these inquests, sheriffs at their tourns, bailiffs at their views of frank-pledges, escheators, and the king's officers of his forests, have power, by authority of their

Edw. II. office, to send for the people, which none others have without the king's writ, and that is for the keeping of the peace, for the right of the king, and for the common people.

Sec. 17. The 17th section applies solely to views of frank-pledge, and the articles of inquiry at these courts. They are to be held once in the year; and (which is decisive against the exclusive right claimed by freeholders in some boroughs), they are to be *not only of the freeholders, but of all persons within the hundred*:—*Strangers* (that is, those who have not been there for a year and a day), *denizens* of the age of 12 years and upwards; except archbishops, bishops, abbots, priors, religious persons, and all clerks, earls, barons, knights, femes coverts, deaf, dumb, sick, idiots, infected persons, and those who were not in any dozein. And the inquiry is to be not by villains or women, but by the afferment of freemen at the least.

Villains. As illustrative of the incapacity of villains, and of those who were not law-worthy, it is stated, that a villain cannot indict a freeman, nor any other who is not receivable to do suit in inferior courts, and therefore it was anciently ordained, that none should remain in the realm if he were not in some decennary and pledge of freemen; and it belonged to the hundred once a year to show the frank-pledges, and the pledgers, and therefore are the views called the view of frank-pledges.

Amongst the articles, it is provided, that they should declare whether all who ought to appear do so, or not—and if all the freemen of the hundred and the fees be present—if all the frank-pledges have their dozeins entire, and all those whom they have in pledge—if all those of the hundred, or of the fees of the age of 12 years and above, have sworn fealty to the king, and of receivers of others wittingly, as of out-laws, &c.

Old
Sarum.

In confirmation of what we have before urged with respect to places not capable of continuing their local jurisdictions, as Old Sarum, &c., it is stated, that what *cannot be redressed at the view of frank-pledge by these presentments, is presentable at the*

sheriff's first tourn; so that the instant any place having a court leet, ceased to present that which was inquirable at the leet, the jurisdiction of it immediately reverted to the sheriff and his tourn; by which simple expedient, the due inquiry into these matters was certainly preserved, and at the same time, the local jurisdiction of the district adjusted itself by the ordinary course of proceeding, to the varying changes of population. Edw. II.

Amongst the outlaws, are classed those who were not in allegiance under the king; and they and their goods were to be seized. And it is added—if any one proffer himself to swear fealty to the king, he is first to be pledged in some frank-pledge, and put in decennary, and afterwards sworn to the king; and then enjoined obedience to his chief pledge.

In the second section of the second chapter, relative to judges, it is stated, that women are forbidden to be judges; and thence it is, that *femes coverts* are excused from doing service in inferior courts. Cap. 2.
Sec. 2.

On the other part, a villain cannot be a judge, by reason of the two estates, which are repugnant; and thus the chapter continues with respect to other incapacities.

In the fourth section, the liability to do suit in another fee, by reason of residence or dwelling, is expressly mentioned—a strong confirmation of the local duties which result from residence. Sec. 4.

In the 24th section, we have, as in *Fleta*, some trace of the doctrine of corporations; but it is confined here, as it was also in that treatise, to ecclesiastical bodies. It is said, “of goods which are in common, no several action lieth; and “therefore of goods which belong to men of religion, the action belongeth to the sovereign of the house, in his name, “for him and his convent,” &c. Sec. 24.

In the 25th section, the term “corporation” occurs, but it does not appear distinctly in that passage, to what it relates; but considering it with reference to our former extract, it would seem to be also applicable to ecclesiastical corporations having franchises, of many of which they were possessed. Sec. 25.

Edw. II. We have also a confirmation of that law to which we have
 Villains. before alluded—making the villains entirely dependent upon
 their lords;—for “it is forbidden to villains to bring an action
 “ of novel disseisin, or redisseisin, without their lord; foras-
 “ much as they are in the custody of their lords.” And in
 the 28th section it is said, they can purchase nothing but to
 the lords’ use.

Sec. 28. The 28th section relates entirely to villainage and neifty,
 Villainage. to the same effect as the same heads in Glanville, Bracton,
 Britton, and Fleta.

The writ de nativo habendo is referred to, as well as the
 mode of villains acquiring freedom by grants from their
 lords, of any free state of inheritance, to descend to their
 heirs—with several other modes of effecting the same pur-
 pose, particularly that one which, in some degree, bears upon
 our present inquiry, of a villain being put as a juror amongst
 freemen, without the lord’s claim; and other instances of
 freedom, acquired by the neglect or default of the lord, par-
 ticularly as in Glanville, by the villain remaining within a
 city, or upon the king’s demesne, for one whole year; or if a
 villain is a suitor in another court, &c.

A definition is here given of the term, for it is said, “villains
 “ are tillers of lands, dwelling in upland villages; for of
 “ ville, cometh villain—of borough, burgess—and of city,
 “ citizen:” and of villains, mention is made in the Great
 Charter of liberties.

Sec. 29. In the 29th section it is stated, that neither villains, nor
 infamous persons, can be summoners.

Sec. 30. In the 30th section, burgages are mentioned.

Cap. 3. In the third section of the third chapter, it is said, “that
 Sec. 3. “ no one within a *franchise* has any jurisdiction of a thing
 “ done in the *gildable*.” Here the distinction between the
 city, borough, and franchise, on the one hand, and the
 county or gildable on the other, to which we have before
 referred, is expressly recognized.

Sec. 14. The 14th section of the same chapter says, that “to an
 “ approver it may be answered thus—I am a true man, sworn
 Frank-pledge. “ to the king, and within a frank-pledge;—and the appro-

“ver is a felon attainted and out of the king’s protection, Edw. 11.
 “and by consequence, out of the king’s peace, whereby
 “he hath lost his free voice, and every right and action, so
 “as he is not to be admitted in any action no more than a
 “man who is outlawed by judgment.” From which passage
 we may collect on the one hand, the effect of being in frank-
 pledge, and of being “*law-worthy*,” as we have seen before,
 and on the other hand, the total loss of civil rights by
 attainder.

In the 18th section of the same chapter, privileged places, Sec. 18.
 where the king’s writ runneth not of an act done in a
 foreign place, nor è contra, in a franchise, of an act done in a
 gildable, are again mentioned.

Places enfranchised, and the gildable, again occur in the Sec. 23.
 23rd section; and also the plea of freedom, by fine, stock, or Freedom.
 birth, to an action of villainage, and also the writ de libertate
 probanda. It is also stated, that “freedom is never lost by
 prescription of time;” which has led to the common position,
 that once free, always free; and from which in a great degree
 arose the abuse of non-resident freemen. For it was supposed,
 that if this doctrine was accurate, when a person had once
 been admitted as a freeman of a particular place, he always
 continued so, and was entitled to all the privileges; assuming
 that the being recognized as a freeman, gave him all the
 rights of a citizen or burgess—whereas, the being of free
 condition was only a precedent qualification for either of
 those situations; to which they were not entitled, unless they
 were *inhabitant householders of*, and *belonging to*, the city
 or borough:—a distinction, which being overlooked, has led to
 the common error of confounding freemen with citizens and
 burgesses, both with reference to municipal and parliamentary
 rights.

In several places, reference is made, as in our former law
 authorities, to females not being bound to be in frank-pledge,
 nor being capable of outlawry; which circumstances are the
 real ground also of their not being admissible as citizens or
 burgesses.

The presentments by sheriffs and bailiffs, in tourns and Cap. 4.
Sec. 20.

Edw. 11. views of frank-pledge, are mentioned. In the articles of Eyre, the claimers of franchises is one.

Sec. 22. In the 22nd section, it is expressly stated, that it is lawful for every one who findeth himself grieved, to sue for the king, to seize every franchise forfeited for contumacy—as if the bailiff of a franchise do not execution of the return of the sheriff, according to the demand of the king; or for any abuse—as by using his franchise too largely, not duly. And the writ commands the sheriff to enter the franchise, and the king doth recover the seizure thereof, and so the same became gildable which was before a franchise.

Here the doctrine for which we have before contended, of the return of every place which was seized into the king's hand, to the jurisdiction of the sheriff, is most distinctly and unequivocally propounded.

Sec. 27. Another article of the Eyre, is as to outlaws, and the names of their pledges, and whether they were in dozein or frank-pledge.

Cap. 5. The first section of the fifth chapter, contains an enumeration of the abuses of the law—the sixth is, that it is an abuse to suffer any to be in the realm above 40 days, who is of the age of 14, and not sworn to the king, and in some pledge or dozein. And the same occurs again in the 65th. Sec. 65, The 89th states, that a villain is not a villain, but so long as he remaineth in custody; and the 91st section describes it as an abuse, that others suffer villains to be in their views of frank-pledge.

In the enumeration of the seven punishments inflicted by Alfred, for false judgments, it is said, that he hanged the suitors of Dorchester, because they judged a man to death, by jurors in their liberty, for a felony which he did out of their liberty, and whereof they had not the cognizance, by reason of foreignty—than which, a more decisive mark of the precise limits within which local jurisdictions were restrained, cannot possibly be cited.

Sec. 37. The 37th section refers to a forfeiture for a similar offence, in taking a person for a felony done out of the liberty, in the gildable.

The 116th also speaks of privileged places, where the king's writ runneth not, and of franchises and the gildable. Edw. II.
Sec. 116.

The 144th section says, that it is an abuse that trespassers who have nothing, are not banished from towns, counties, manors, and hundreds, as they used to be—the real origin of the doctrine and practice of disfranchisement. Sec. 144.

The second section of the same chapter, which relates to the defects of the Great Charter, refers to those liberties of London which are sufferable by law, and not repugnant to it. And it is said, that the interpretation of their charters, be the same as those of the Cinque Ports and other places—a strong confirmatory proof of the uniformity of the privileges of all boroughs. Sec. 2.
London.

Cinque
Ports.

The obligation upon merchants to be sworn to the king, if they stay longer than 40 days in the realm, is recognized.

The remainder of this compilation, relates to the subject matter contained in the statutes, from which we have already made our extracts, with illustrative comments.

We have now closed the extracts from the statutes, charters, documents, and laws occurring in this reign, which relate to the subject of our inquiry; and the clear result is, that the *general law and the municipal institutions, still continued to be in strict uniformity with the Saxon law*—that the great distinction in orders of men between the villains and free, still existed—the system of frank-pledge continued—those of free condition, were sworn and enrolled at the court leet. And notwithstanding the assertion to which we have before alluded, of a great revolution having been effected in the grounds and mode of admission of freemen, it seems to be without foundation, as no trace whatever appears of it in any of the certain records of information to which we have referred; nor, in truth, is it possible that such a revolution could have occurred; for at the time we are speaking of, no other class of freemen but the *liberi homines*, defined by the common law, existed, or were even thought of; and the principles, as well as the practice, upon which the freemen were admitted, sworn, and enrolled, were all derived from Conclusion

Edw. II. the common law. Nor could there be any authority for swearing them, but under that law—for it was always, upon principle, illegal to administer any oath, but by due authority of law; and there is none, either then, or which at any time since has existed, for swearing the freemen of corporations merely as such; nor has any right ever been suggested, or supposed to exist, except under the law of the court leet; and therefore in practice, the oath of a freeman, even to this day, is in fact taken with reference to the law of the court leet, and contains, as it ought by that law, the oath of allegiance. The concurring testimony, therefore, of all documents, and even of practice, to the present time, tends to deny the great revolution suggested, which would, indeed, seem to carry along with itself, its own refutation, for it is founded on no express authority; and such a change could not have been effected, without leaving behind it some traces of the occurrence.

The modern notions of freemen of corporations, is founded upon mere misapprehension, arising from forgetfulness of the origin and nature of these things, and omitting to distinguish and discern the course of events. The admission and swearing of freemen, who are, in consequence of such admission and swearing, entitled to be of the body of incorporated citizens and burgesses, is mistakenly referred, as well as the privileges of admission by birth, marriage, and service, to some supposed peculiar right or law of corporations; but no vestige of any such provisions is to be found in our ancient laws, statutes, or charters; *nor is there any authority in either the principles or practice of our institutions, for adopting such a term, as that of "freemen of corporations:"*—and it seems a most extraordinary gratuitous assumption, to attribute these things to some unknown and undiscoverable cause, of which there is no evidence, when there is a clear, known, and allowed source, to which they may be attributed. Thus to assume that the freemen by birth, marriage, and service, are connected with any peculiar undefined and unproved corporate rights, is most absurd, when they have so distinct an explanation in the "*liberi homines*" of the common law, and the un-

varying course of ascertaining the right to freedom by birth, or other circumstances, to which the statutes, charters, and law treatises which we have quoted, every where refer. The direct and simple mode therefore, in which the ancient law, and modern practice is to be reconciled, is this:—that the ancient *liberi homines*, were those, who by birth, marriage, service, or other proveable acts, could be shown to be of free condition:—and who actually having a house, or domicile in a city or borough, were, in the strictest sense of the word, the men *of, and belonging to* that city or borough, and who, as a necessary consequence of inhabiting such houses, were bound by law, to pay the scot, or pecuniary contributions to the common burdens of the place; and also to execute the public offices and functions, which came to them in due rotation, and which is, in the language of antiquity, familiar however, even to these times, performing *lot*; and who in consequence of their *resiancy*, were entitled at any period, and bound after the expiration of a year, under the penalty of amercement, to attend at the court leet, and there be enrolled, giving their pledges, and taking the oath of allegiance; and these *liberi homines*, or freemen of the boroughs, were the *burgesses*, who in subsequent times, had superadded to the original common law privileges, or duties, the power of taking lands or possessions in their common name, and by succession, and of suing, and being sued by one common name; and which, in truth, and nothing else, gave them the superinduced rights and privileges of incorporations,—the state in which we now find them.

Thus it is clear that there has been no change; the class of *burgesses* has ever continued the same—and the privileges of all the boroughs in England, Ireland, Scotland, and Wales have, in effect, been similar. Nor was any change at all effected even in the form of their creation, or the language of the charters of confirmation or new grant, excepting only, that in the last reign, and in this, the term “*successors*,” was added to that of heirs; the latter term being borrowed, as we have seen, from the ecclesiastical documents and charters, and being undoubtedly

Edw. II. properly applicable to aggregate bodies, who did, in fact, enjoy by succession, though not at that time by any real or supposed corporate right, for no such principles were then applicable to municipal bodies. This matter has been put upon such clear and distinct grounds, and supported by such indisputable authorities in Mr. Madox's *Firma Burgi*, that it is unnecessary to add to his facts or reasoning, as it is impossible to increase their weight or cogency.

EDWARD III.

1327 to 1377. In entering upon the records of this reign, we shall adopt a similar division of the subject to that which we have previously pursued; premising only, that it was at this period justices of the peace were first established.

STATUTES.

1327. Stat. 2. Cap. 5. With respect to the statutes, we find in the 1st of Edward III. the local liability towards claims of the state, to which we have made frequent allusion, is again recognized by a provision, which declares that no man should be chargeable to arm himself otherwise than as he was wont in the time of the king's progenitors; and that no man should be compelled to go out of his shire but when special necessity required.

Cap. 9. In the 9th chapter it is declared, *cities and boroughs, and franchised towns, shall enjoy their franchises, customs, and usages, as they ought and were wont to do.*

Cap. 11. And in the 11th chapter, *indictments before sheriffs in their town*, are mentioned.

Cap. 17. The 17th chapter provides, that the *sheriffs and bailiffs of franchises*, and all other that do take indictments *in their tourns*, or elsewhere, where indictments ought to be made, (which would at that time include the leets,) shall take such

indictment by roll indented, whereof the one part shall remain with the indictors, and the other part with him that taketh the inquest. Edw. 111.

In the statutes made at Northampton, in the 3d chapter, which relates to the going armed, it is enacted that no man, except the *king's servants*, in his presence, &c. ; and also *upon a cry made for arms to keep the peace, &c.* shall be so hardy as to come before the *king's justices*, or other of the king's ministers doing their office, with fire and arms, upon pain to forfeit their armour to the king, and their bodies to prison at the king's pleasure. And that the king's justices, in their presence, sheriffs, and other ministers in their bailiwick, lords of franchises, and their bailiffs in the same, and mayors and bailiffs of cities and boroughs, within the same cities and boroughs, and borough-holders, constables, and wardens of the peace within their wards, shall have power to execute this act. 1328.
Statute of
North-
ampton.
Cap. 3.

In this statute we have a reference to the Hue and Cry, which occurred so frequently in the early laws. We have likewise a distinct enumeration of the king's officers for the preservation of the peace, according to the different local divisions of the county into shires—franchises—cities—boroughs and wards.

The next chapter, which relates to the confirmation of the statute of Lincoln, refers again to the same officers, with the addition also of the hundredors. And in conformity with the previous statute, directs, that all sheriffs, hundredors, and bailiffs, should have lands in their shires or bailiwicks; that sheriffs and bailiffs of fees, should cause their counties and bailiwicks to be kept by such as have lands. Cap. 4.

Probably this was one of the earliest instances in which the necessity of having lands was attached as a qualification for the exercise of any office.

The 9th chapter directs, amongst other things, in conformity with the Great Charter, that all merchant strangers' merchandises might come and go into England. That writs thereupon should be sent to all sheriffs of England, and to the mayors and bailiffs of towns. Cap. 9.
Merchant
Strangers.

Edw. III. In this statute we perceive a recognition of the provisions with respect to merchant strangers, which occur so frequently in the charters we have quoted, and a recognition again of the local divisions into shires and towns. The same provisions are repeated in the 14th of Edward III. stat. 3, chap. 2, with a saving of the franchises and free customs granted to the city of London, and other cities, boroughs, and good towns of the realm.

Cap. 12. The 12th chapter of the same act relates to the fermes which had been paid for hundreds and wapentakes, and provides for their annexation to the farm of the counties by reciting,

That all the counties in England were, in old time, assessed to a certain *ferm*, and then were all the *hundreds and wapentakes in the sheriff's hands*, rated to *this ferm*; and after were approvers sent into *divers counties*, which did increase the fermes of some hundreds and wapentakes. "And after, the
 "kings, at divers times, have granted to many men, part of
 "the same hundreds and wapentakes, for the old fermes only;
 "and now late, the sheriffs be wholly charged of the increase,
 "which amounteth to a great sum, to the great hurt of the
 "people, and disherison of the sheriff and their heirs—it is
 "ordained, that the hundreds and wapentakes let to ferm by
 "the king that now is, be it for term of life or otherwise,
 "which were sometimes annexed to the fermes of the counties,
 "when the sheriffs be charged, shall be joined again to the
 "counties; and that the sheriffs and their heirs have allow-
 "ance for the time that is past; and that from henceforth
 "such hundreds and wapentakes shall not be given or severed
 "from the counties."

These provisions were, in all probability, intended to correct the abuses in this respect, which had been introduced by the favouritism of Edward II.; and they are material to our present investigation, as showing the jealousy with which the ancient local divisions were maintained—a proof of which occurs again in the 14th of Edward III., chap. 9.

1330.
Cap. 9.

The qualification of possessing lands, was also extended to other officers, and the reason of it stated in the 4th of Edward

III., chap. 9, whereby it was directed, that no sheriff, bailiff Edw. III.
of hundred, wapentake, nor of franchise, nor under-escheator,
shall be from henceforth, except they have lands sufficient in
the place where they be ministers, whereof to answer the
king and his people, in case that any man complain against
them, as was ordained at the Parliament at Lincoln; and
which by the 5th of Edward III., chap. 4, is extended also
to tithings; and by the 14th of Edward III., to the clerks of
recognizances in cities and boroughs.

The 5th of Edward III., chap. 14, recites, that in the 1331.
Cap. 14.
statute of Winchester, it is contained, that if any stranger
pass by the country in the night, of whom any have suspicion,
he shall presently be arrested and delivered to the sheriff, and
remain in ward, till he be duly delivered. And because there
have been divers manslaughteres, felonies, and robberies done
in times past, by people that be called roberdesmen, wasters,
and draw-latches,—“it is accorded, that if any may have
any evil suspicion of such, be it by day or by night, they
shall be incontinently arrested by the constables of the towns.
And if they be arrested within franchises, they shall be de-
livered to the bailiffs of the franchises; and if in gildable,
they shall be delivered to the sheriffs, and kept in prison till
the coming down of the justices assigned to deliver the gaol.
And in the mean time, the sheriffs or bailiffs of the franchises
shall inquire of such arrests,” &c.

Here we have again a recognition of the distinction be-
tween the gildable, or county, and the franchises, with their
respective officers to keep the peace of the king.

In this year, Parliament granted a fifteenth, from the per- 1333.
sonal estates of the nobility and gentry, and a tenth of the
moveables of the burgesses. And their importance seems at
that time to have increased, and was generally recognized, as
we shortly afterwards find express mention made of them as
one component part of the House of Commons, and are
described as belonging to the local divisions of the county, in
a statute reciting—“That whereas, before this time in many
Parliaments, and now at this present Parliament summoned
at York, it was showed to our said lord the king, by the 1335.
Stat. 1.

Edw. III. knights of the shires, citizens of the cities, and "burgesses of the boroughs," which come for the commons of the said shires, cities, and boroughs, that in divers cities, boroughs, and other places of his realm, great damage has been done to him and his people, by some people of cities, boroughs, ports of the sea, and other places of the said realm, which will not suffer merchant strangers to sell or deliver such wines, livings, victuals, nor other things, to any other than themselves of the cities, boroughs, ports of the sea, or other places, by reason whereof such stuff as aforesaid is sold to the king and to his people, in the hands of the said citizens, burgesses, and other people, denizens, more dear than they should be, if such merchant strangers might freely sell them to whom they would, to the great damage of our lord the king," &c.

The reader will trace in this recital, the grievances which in all probability arose from usages and bye-laws, such as those adopted by the Cinque Ports, in the custumals we have before quoted.

And to remedy these grievances, it was ordained, "That all merchants, strangers, and denizens, who will buy or sell corn, &c., and all other things vendible, from whencesoever they come, by foreigners or denizens, at what place soever it be, city, borough, town, port of the sea, fair, market, or elsewhere within the realm, within franchise or without, may freely, without interruption, sell them to what persons it shall please them, as well to foreigners as denizens. And if haply any disturbance be done to any merchant, stranger, or denizen, or any other, for the sale of such things in any city, borough, town, port of the sea, or other place which hath franchise; and the mayors and bailiffs, or other which hath the rule of such franchise, being required by the said merchants or other, thereof to provide remedy, and do not, and be thereof attainted, the franchise shall be seized into the king's hands. And nevertheless, he and the other which hath done this disturbance against this statute, shall be bound to yield and restore to the said merchant, his double damages which he hath thereby sustained. And if such disturbance or interruption be done to such merchants, or to other, in such

towns or places where no franchise is, and the lord, if he be present, or his bailiff, constable, or other ruler of the said towns and places, in the absence of the lords, being therein required to do right, and do not, and thereof be attainted, they shall yield to the party plaintiff his double damages, as afore is said; and the disturbers in the one case and the other, as well within franchises as without, if they be attainted, shall have one year's imprisonment, and nevertheless, be ransomed at the king's will." "And it is enacted and established, that the things aforesaid shall be observed, performed, and kept in every city, borough, town, port of the sea, and other places within the realm, notwithstanding charters of franchise granted to them in usage and custom to the contrary."

Edw. III.

Here we have not only the king's officers in the cities and boroughs expressly mentioned, as having the rule of such franchises, but we have also the distinction pointed out between the enfranchised places, and those which have no franchises.

In the statute of the 10th of Edward III., after the king, the prelates, earls, barons, and others of the king's council, the *commons* are expressly mentioned. 1336.

In the statute of the 23d of Edward III, chapter 7, relative to beggars, we find an expression, which seems strongly to mark the difference between cities, boroughs, and market towns, and opposed to the opinion expressed by Brady and other authors, that they were identical. 1349. Cap. 7.

It is there provided, that the writs sent in pursuance of that statute, should be proclaimed in the cities, boroughs, market towns, and ports of the sea.

The 2d chapter of the Statute of Labourers, 25th Edward III. prohibits the departing in the summer from the town, where the individual had dwelt in the winter—which is another strong instance of the prohibitions denounced by the law from the earliest periods against vagrancy, and for the purpose of providing fixed residences. 1351. Cap. 2.

Residence appears, from the earliest periods of our history, to have been a most important consideration, and that which regulated the greater proportion of the relations of life. Residence.

Edw. III.

1343.

Thus it was agreed in Parliament in this year, that Lombards and other merchant strangers should be taxed *where they dwelt*, as other merchants denizens.

1342.
Canon
Law.

The same policy which pervaded the common law of England, requiring every man to do his suit in the place where he resided, is observable also in the canon law. By the constitution of Archbishop Stratford, made at London in the 16th year of the reign of Edward III. A. D. 1342, there is a clause particularly providing, that no person should suffer ecclesiastical punishment but in the place where he *inhabited*; first, because there his offence is known; and next, on the ground of unnecessary trouble and expence to the party punished.*

1349.
Cap. 1.

23d Edward III. chapter 1.—This statute, as to the service of those who are not able to support themselves, provides, “That *every man and woman of our realm* of England, of what condition he be, *free or bond*, able in body, and within the age of three-score years, not living in merchandise, nor exercising any craft, nor having of his own whereof he may live, nor proper land, about whose tillage he may himself occupy, and not serving any other,—if he in convenient service, his estate considered, be required to serve, he shall be bounden to serve him which so shall him require; and take the only wages, allowances, rewards, or salary, which were accustomed to be given in the places where he oweth to serve, in the twentieth year of our reign of England, or five or six other common years next before. . Provided always, that the lords be preferred before other in their bondmen, or their land tenants, so in their service to be retained; so that nevertheless the said lords shall retain no more than be necessary for them; and if any such man or woman being so required to serve, will not the same do, that proved by two true men before the sheriff (or the bailiffs of our sovereign lord the king, or the constables,) of the town where the same shall happen to be done, he shall anon be taken by them, or any of them, and committed to the next gaol, there to remain

* Lynd. in fine, p. 52.

under strait keeping till he find surety to serve in the form ^{Edw. III.} aforesaid."

This and the following statute clearly establish, that vil- ^{Villainage.} lainage was at this period in full use; and that the great distinction between freemen and villains was palpably discernible.

In the 25th of Edward III. it was provided, "That notwithstanding adjournment made in Eyre, by writ of libertate probanda, purchased in favour of villains, to delay the lords of their actions of such villains, the same lord shall be received to allege the exception of villainage against their villains in all writs, whether that the said writs of libertate probanda were purchased by deceit, or in other manner; and that the lords may seize the bodies of their villains, as well as they might before that the writs of libertate probanda were ordained or purchased." <sup>1350.
Stat. 5.
Cap. 18.</sup>

28 Edward III. chap. 10.*—This statute for the correction of abuses in London, provides, "Because the errors, defaults, and misprisions which be notoriously used in the city of London, for default of good governance of the mayor, sheriffs, <sup>1354.
Cap. 10.</sup> and aldermen, cannot be inquired nor found by people of the same city; it is ordained and established, that the said mayor, sheriffs, and aldermen, which have the governance of the same city, shall cause to be corrected these defaults, errors, and misprisions, and the same duly punish, upon a certain pain: that is to say, at the first default, a thousand marks to the king; and at the second default, two thousand marks; and at the third default, that the franchise and liberty of the city be taken in the king's hand: to be inquired into at St. Michael next coming, so that if they do not cause to be made due redress as aforesaid, it shall be inquired of their defaults by inquests of people of foreign counties; that is to say, of Kent, Essex, Sussex, Hertford, Buckingham, and Berks, as well at the king's suit as others that will complain. And if the (mayors,) sheriffs, and aldermen be by such inquests (thereto assigned) indicted, they shall be caused to come by due process before the king's justices, which shall ^{London.}

* Mag. Rot. Tur. Lond.

Edw. III. be to the same assigned out of the said city, before whom they shall have their answer, as well to the king as to the party; and if they put (them in) inquests, the same shall be taken by foreign people as afore is said; and if they be attainted, the said pain shall incur and be levied of the said mayor, sheriffs and aldermen, for default of their governance; and nevertheless the plaintiffs shall recover (the) treble damages against the said mayor, sheriffs and aldermen. And because that the sheriffs of London be parties to this business, the constable of the Tower, or his lieutenant, shall serve in the place of the sheriffs to receive the writs, as well originals of the Chancery, as judicials, under the seal of the justices, to do thereof execution in the said city; and process shall be made by attachment and distress, and by exigent, if need be; so that, at the king's suit, the exigent shall be awarded after the first capias returned, and at the third capias returned at the suit of the party: And if the mayor, sheriffs, and aldermen, have lands or tenements out of the city, process shall be made against them by attachments and distresses in the same counties where the lands or tenements be: And that every of the said mayors, sheriffs, and aldermen, which do appear before the said justices, shall answer particularly for himself, as well at the peril of other which be absent as of himself: And this ordinance shall be holden firm and stable, notwithstanding any manner of franchise, privileges, or customs: And this ordinance shall extend to all cities and boroughs of the realm where such defaults or misprisions be used, and not duly corrected nor redressed; saving that the inquests shall be taken by foreign people of the same county where such cities or boroughs be: And that the pain of those of the said boroughs and towns, which shall be thereof attainted, shall be proved by the discretion of the justices thereto assigned."

In this statute the mayor, sheriffs, and aldermen, are stated to have the governance of the city, similar to that which we have previously seen; and the king's head officer was described to have in the borough the rule and governance thereof. It also clearly appears, as we have previously

urged, that the Tower was distinct from the city—that the persons living in the counties, and out of the boroughs, were considered as *foreigners*, and that those districts were contradistinguished from each other. Edw. III.

The 28th of Edward III. provides for fresh suit, and hue and cry for robbers, in accordance with the early Saxon laws; the cry being directed to be made in all places where solemn assemblies of the people should be held. 1354.
Cap. 11.

The statute of the 31st of Edward III., as to the sheriff's tourn, recites, "that in the Great Charter it is contained, no sheriff, nor his bailiff, shall make his tourn (by hundreds) but two times in the year, in a place due and accustomed, that is to say, once after Easter, and another time after Michaelmas; and now divers of the commons have grievously complained them, that some sheriffs make their tourns oftentimes in Lent, when men ought to intend devotion, and other works of charity, for remedy of their souls; and sometimes after the gale of August, when every man almost is occupied about the cutting and entering of his corn, whereby the people perceived them much grieved and disquieted: our lord the king, desiring the quietness of his people, hath ordained and stablished," that every sheriff from henceforth shall make his tourn yearly, one time within the month after Easter, and another time within the month after Saint Michael; and if they hold them in other manner, that then they shall lose their tourn for the time. "And every county, that is to say, the *people dwelling in the county*, shall answer for the robberies done; and the same as to the hundreds and franchises, which is to be done within 40 days." 1357.
Cap. 15.
Stat. 1.

The 34th Edward III. chap. 11, provides, "that if any labourer, servant, or artificer, absent himself in any city or borough, and the party plaintiff come to the mayor and bailiffs (who in the title are described as the chief officers of the borough), and require delivery of his servant, they shall make him delivery without delay; and if they refuse to do the same, the party shall have his suit against the mayor and bailiffs before the justices of labourers; and if they be thereof attainted they shall pay to the king 10*l.*, and to the party 100*s.*" 1360.
Cap. 11.

Edw. III. By the 37th Edward III. chap. 6, it was ordained, "that
 1363. artificers, handicraft people, hold them every one to one
 Cap. 6. mystery, which he will choose, betwixt this and the feast of
 Candlemas; and two of every craft shall be chosen to sur-
 vey that none use other craft than the same which he hath
 chosen."

In this statute we must remark, that there is no mention
 of either cities or boroughs; but the crafts and mysteries
 appear to be dealt with altogether separately and distinctly
 from the places in which they might happen to exist.

Cap. 17. And by the 37th Edward III. chap. 17, it is ordained, as
 to villainage, that no writ be abated by exception of acknow-
 ledgment of villainage, if the demandant or plaintiff will
 aver that he who alleged the exception, was free the day
 of the writ purchased.

Purveyors. The interference of purveyors, which we have seen from
 many charters, was so great a source of oppression to the
 people, was in some degree regulated by several confirmatory
 statutes in many years of this reign, in one of which it is
 directed, that the heinous name of purveyor should be
 changed into that of buyer.

We find in this reign, as in the former, that the appella-
 tion of "Men" occurs frequently in all documents, and with
 reference to all local divisions—thus, the "*men* of the wapen-
 take," as well as the "*men* of the county," are mentioned in
 1333. the pleas before the king at York, in the 7th year of his reign.*

And the following instances of the use of *commonalty*, &c.
 occur in the several statutes of this period.

Commonalty.—1st Edward III., 1327, statute of Westmin-
 ster, "*de la commune de son roialme*."—2nd Edward III.,
 1328, statute of Northampton, "*et tote la communalte du roi-
 alme*."—4th Edward III., 1330, "*a la requeste de la commu-
 nalte*."—9th Edward III., statute 1, 1335, "*et le poeple de
 son roialme*."—9th Edward III., statute 2, chapter 1, 1335,
 "*et oppression de son poeple*."—15 Edward III., 1343, stat.
 3, Ex. Rot. in Turr. Lond., "*et la communalte*."—16th Ed-
 ward III., 1344, statute 2, Ex. Rot. in Turr. Lond., "*la com-*

* Trin. T. 12 Coke's Rep. 127.

munalte.”—“It is assented and accorded for the good governance of the commons.” 42nd Edward III., chapter 3, 1368.—“*La communalte*,” 42nd Edward III., chapter 10, 1368.

15th Edward III., statute 3, 1343, chapter 3, “*par bones gentz du pais*.”—17th Edward III., “*le parlement tenus a Westminster*.”—“*Que bones gents et loialse*.”—25th Edward III., statute 5, 1350, Ex. Rot. in Turr. Lond., “*des bones et loialx*,” “*loialx gentz*.”—28th Edward III., chapter 6, 1354, “*prodes hommes*.”—28th Edward III., chapter 13, 1354, “*des bones gentz et loialx*,” 34th Edward III., chapter 13, 1360.

CHARTERS.

Having extracted the statutes of this reign material to our present researches, we proceed now to collect the *charters* illustrative of the subject.

We shall commence with those of *London*, as the place of London. the greatest importance.*

A charter was granted to this city, in the first year of this reign; by which the king, with the assent of the earls, barons, and all the *commonalty* of the realm in Parliament, confirmed to the citizens, their *heirs* and successors, that according to the Great Charter of liberties, they might have all their ancient franchises enjoyed by custom, from the time of King Edward, William the Conqueror, and other predecessors of the king, as well by charter as without. That the mayor should be one of the justices of gaol delivery at Newgate. And also that the citizens might have infangthef and outfangthef, with the chattels of felons. 1327.

The king likewise granted to the citizens, confirmations of the sheriffwick of London and Middlesex, for 300*l.* yearly, instead of 400*l.*;—and that they might bequeath their tenements, as well in mortmain, as in any other manner. He confirmed the charter of Edward II., as to amercements;—

* There is said to be a manuscript book in existence, written about the middle of this reign, touching the customs of London. It is quoted by Mr. Hargrave in his *Law Tracts*, p. 118.

Edw. III. directing, that the sheriff should be no more amerced, than other sheriffs on this side the Trent. And that the citizens should not be charged for the custody of those who fled to the churches; nor for having their immunities; otherwise than of old they had been accustomed to be charged.

The king also confirmed the power of taking away the weirs:—and adds the provision from the laws of Henry II., that all the merchants should sell their merchandise within 40 days; and that they should continue with their free hosts, without any households or societies by them to be kept.

That neither the marshal, nor clerk of the market was to interfere in the city, nor draw the citizens to plead without the walls. That none were to be escheators within the city but the mayor, who should be sworn for that purpose;—and that the citizens should not be compelled to do military service without the city. That the constable of the Tower should not make any prises of the *men* of the city. That the citizens should also have keepers of the pleas at fairs, &c. And that notwithstanding a late iter in the Tower, the citizens might record their customs, as they were wont to do.

That no summons should be made by the officers of the king within the city; but only by the ministers of the same city. That the sheriffs should have forfeitures of victuals, &c. That the citizens at the iters in the Tower, should be guided by their ancient customs, as in the times of King John and King Henry. That the citizens should be taxed with the "*commonalty of the realm*" as common persons, and not as "*men*" of the city:—that they should be quit of all other talliages.—And that the liberties of the city should not be seized into the hands of the king for any personal trespass, or judgment of any minister of the city.

In conformity with the numerous general statutes we have referred to in this reign, it was also granted, that no purveyor should make any prises in the city, &c. That no prisage was to be made of wines. That no officer of the king should merchandise within the city. And their lands both within and without the city, should be liable to indemnify the city against any thing concerning the execution of their offices.

—And that none of the freemen of the city, should be Edw. 111. impleaded at the Exchequer.

With respect to the provision, as to bequests in *mortmain* Mortmain. in this charter, it is justly observed by Mr. Norton,* that the perpetual bodies to whom the grants in mortmain were made, were *ecclesiastic*, and not *civic*:—for all the early statutes forbidding alienations in mortmain, respected only ecclesiastical bodies, and religious fraternities, and did not relate to municipal bodies:—a striking confirmation of our general doctrine that there were *no municipal corporations at that time*.

The probable ground upon which the doctrine of mortmain was ever considered as applicable to municipal aggregate bodies is, that their existence was supposed to be for the public good—in protecting and advancing the general police, and municipal government of the cities and boroughs—and the substantial services rendered by the citizens and burgesses. Whereas the grant of property to the ecclesiastical houses, withdrew it from public circulation, and no services were rendered by the possessors.

Mr. Norton states,† that another charter of this date was 1327. granted to the citizens, that they should be no more talliaged, but pay their aids according as the counties did, and not as the cities and boroughs.

This appears to confirm the record we have before quoted in the reign of Edward I., describing London as a county.

This king, by the consent of Parliament, upon the same Southwark day as the foregoing, granted another charter to the citizens of London, for the purpose of preventing the escape of felons from London into Southwark, where the ministers of the city could not arrest them; and that they might hold to them, their *heirs*, and successors, citizens of the city, the village of Southwark, at fee-farm.

This charter again establishes that the jurisdiction of the city was confined within its limits;—and we ought also to observe, that notwithstanding this charter, Southwark did not

* Page 449.

† Lib. Alb. Norton, 110.

Edw. III. return members to Parliament, until after the restoration of Charles II.*

1337. Merchant Strangers. A charter was granted in this year, relative to the merchant strangers, and English born;—which recited the statute of the ninth year of this reign, and directed that the citizens of London, notwithstanding the confirmation by the Great Charter, and since by Parliament, should enjoy their former liberties and free customs.

1341. Bye-laws. By a charter of this date,† all the former customs of the city were confirmed, and additional power was given to the mayor and aldermen, by the consent of the commonalty, to make ordinances for the remedy of any evils within the city:—which seems to be the first instance of any grant of a power to make bye-laws.

1354. The citizens in this year,‡ received the privilege of having a gold or silver mace, to be carried by the serjeants, before the chief magistrate; other cities and boroughs being by a precept of the king, expressly forbidden from using maces of any other metal, than of copper.

It is said that at this period, the title of “lord,” was first prefixed to that of mayor; but it seems that it was in the same year, in which these empty honours were obtained, that the statute we have before quoted, was passed to correct the conduct, and regulate the proceedings of the citizens.

1355. It is stated also in a record of the next year, that all the tenements in London, and the whole city, were held of the king in capite.§

1349. It seems that about this period there was a company of goldsmiths in London, as some houses are devised to them.||

1354. And in the 28th of Edward III.,¶ there is a writ from the king, requiring to be informed whether two persons were in *scot and lot*, and ought to enjoy the liberties of the city-~~of~~, and if so, when they were admitted; and the return is, that they were in *scot and lot*, and *ought to enjoy the liberties of the city*.

1363. It also appears, from a record in the 37th year of this

* See Carew. † Lib. Alb. See Wagoner's case, 8 Coke 241.

‡ Lib. Alb. § 2 Rot. Pat. pars 2. m. 19. || 4 Coke, p. 113. ¶ G. 176.

reign,* that certain lands and tenements were found, by the ^{Edw. 111.} mayor of London, as escheator, to be holden of the king in capite, in "*free burgage*," like as *the whole city of London is holden*.

And many other such findings are to be met with at that period, notwithstanding there is no appearance whatever of any burgage tenure right having been in practice or use in London, although the tenure was undoubtedly of that description.

In this year, we find the following important case:†—An office was found before the king's escheator in London, that one Otes de G—— was seized of certain lands in the *city of London*, and had devised them to the warden of the House of St. Mary Overes, in *mortmain*, without the king's license; and this office was returned into the Chancery. On which there issued a scire facias against the terre tenants, to show cause why the said lands should not be seized into the king's hand, as forfeited; and upon this, appeared a woman, and alleged, that the warden, by the assent of the chapter, leased the lands to her, for term of life, saving the reversion, &c., and she made profert of the lease, and prayed aid of them—which was granted: and a writ awarded to the sheriff of London, to warn the said warden, returnable at this day. The sheriff returned, that the warden and chapter had nothing in the city, by which they could be warned, except the reversion of the same lands in which he had warned them. *Belknap* (who seems to have been the counsel in the cause for the defendant) urged, that inasmuch as the warden was not warned in his proper person nor in his lands, but in the freehold of another—the writ was not served: et non allocatur, for a man shall be warned in terrâ petitâ.‡ *Belk.*—We say that in all times the usages of the city of London are and have been, that each citizen shall be able to devise his tenements, as well in mortmain as otherwise, which franchises were confirmed to the citizens, by the charter of the

Book
of
Assise.

* Mad. Fir. Bur. p. 21.

† Book of Assise, 38 Edw. 111. plac. 18; and Year Book, 45 Edw. 111. fol. 26.

‡ And so is the law stated in the book of the Regiam Majestatem.

Edw. III. king's father, anno 11; and we say, that every one that has land in fee in the same city, is a citizen*—and that this same Otes was seised of the same land in his demesne, as of fee, and was a citizen, and so devised the land: and we ask judgment of execution. *Finchden*, for the king, said, he granted the citizens ought to have such franchise—viz. those to whom it extended—that is, those who are *born and heritable in the same city, by descent of inheritance, or who are resiants, and taxable to scot and lot*; and this franchise

* In the report of the same case in the Year Book, (45 Edward III., fol. 26 B.) the words *tenements* in fee, are used instead of *land* in fee, and perhaps with propriety—because there might be a question, whether the term “land” would include every tenement in fee which would make a citizen. However, they are both equally opposed to the modern mode of making citizens, by the choice or election of the corporation, or by redemption. Here the land or tenement is stated as giving an absolute right to a person to be a citizen, or rather actually making the owner a citizen. But this must still be taken with some limitation—namely, that the party was *resident* in London, as appears by the subsequent objection to Otes, that he was a *foreigner*. And also it must be understood, that this was not the only mode of acquiring the freedom; but that every other person of *free condition, residing* there, were his freedom established by fine, tenure, or by other means, was also a citizen.

There is also another difference in the report of this case in the Year Book. The word *and* is introduced, which makes the passage run thus—“every one who has tenements in fee, and is a citizen, can devise, &c.”—which probably is the proper construction of the passage; because the power of devising, which is here added, seems necessary to complete the sense; and both the reports afterwards concur in stating, that Otes was seised of the land, *and* was a citizen. But this difference is not material, as the citizens also are afterwards distinctly described; and the distinction between them and *foreigners* clearly marked out. From the whole it appears, that the right of being a citizen, as it was then allowed on all sides, was an absolute right, depending on certain qualifications possessed by the citizen, and not conferred by election or choice. The most general of those qualifications was, being *resident, and taxable to scot and lot*. The other, from its nature, must have been very limited, namely, from being born in the city, and taking lands there by inheritance.

It should be observed, that one of the terms used in describing a citizen, is *taxable* to scot and lot; and which appears on principle to be the proper term—for if a man is liable to be rated and to pay the tax, he ought to be entitled to the privilege of citizenship; and so of other privileges, whether he is rated and pays or not—because he may be rated—the rate can be enforced against him—and the omission of either the one or the other is not his fault, but that of others.

It is true the modern practice is otherwise; but there seems to be the authority of Lord Holt, for the principle above contended for—since, in the case of *Vinkinstone and Ebdon*, he decided, that to support a distress for a duty, due in consideration of the repair of an harbour, it was sufficient to show the liability of the party who claimed the duty to do the repair, without showing that the repair was actually done—saying, as reported in Carthew, “it is the obligation which lies on them to “do the thing, and not the performance of the thing itself, which is the consideration “of the duty.”—Carth. 359.

was so declared and claimed in Eyre, and by them prayed, Edw. 111.
 that this *should not extend to any other persons*; and he
 (i. e. Belknap,) acknowledged, that this same Otes was
 not of such condition, but was a *foreigner*. We ask judg-
 ment, and pray execution. *Belknap*.—And we pray judg-
 ment, since this is a thing and usage annexed to frank-
 tenement; and you have not denied but that he was a citizen.
 And we pray that you may be barred.

Green.—And because you cannot deny that he was *neither*
resident nor taxable, &c., nor inherited by succession—so he
 was not a citizen to whom this franchise could descend: and
 you do not deny but that the lands are alienated in mort-
 main, and in no other case has this been adjudged before
 this time:—so the court awards that the king have execution.

From the annals of William of Worcester in the second
 volume of Hearne's *Liber Niger*,* it appears that the king 1376.
 had caused the mayor and elders, seigniories, (probably the
 aldermen, of the city) to be displaced, and others to be elected
 in their stead, for their riotous attack upon the house of the
 Duke of Lancaster in the Savoy.

However in the same year, the king granted another Aldermen.
 charter, reciting the articles by Edward II. in the 12th year of
 his reign, which states them as having been given to the citizens
 of London for the common profit of those who "*dwell*" in the
 city, and repair thereto. That the aldermen should be re-
 moved by the *commonalty* every year; and that those dis-
 placed should not be chosen again next year, but others, by
 the same wards.

That as divers opinions and strifes had arisen between
 the aldermen and commonalty, upon their removal, by the
 wrong interpretation of the words in the charter, viz., the
 aldermen affirming, that by the words "*sint amobiles per*
communitatem," they ought not to be removed from the
 office of aldermanship, without some sufficient or notorious
 offence; but others of the citizens being of a contrary
 opinion—the commonalty had besought the king to explain
 the words, and remove all doubt.

Whereupon the king declared, "that every alderman should

* Page 440.

Edw. III. "annually cease from his office, and not be chosen again, and
"that other aldermen should annually be elected by the
"ward, in the place of those removed."

From this charter it appears expressly, that all matters granted for the government and regulation of the city, were intended for the benefit of those who *dwelt* within it,—and it is evident beyond all possibility of dispute, that the aldermen were to be elected by the *commonalty* in the wards—that is, by the *inhabitant householders*—as they are to this day.

Another charter also was granted in this year, referring to the former, as to the merchant strangers remaining with their hosts without keeping any houses or societies; and it directed that there should be no brokers of any merchandise, unless they were chosen by the merchants in their mystery, and sworn; and that none who were not of the liberty of the city, should sell by retail.

The king then recites, the mayor, aldermen, and *commonalty*, had complained to Parliament, of their liberties having been restrained and taken away—and also of grievances arising from *strangers* dwelling in the city, keeping house, and being brokers; and selling by retail; thereby enhancing the price of merchandise. And that such persons remained there more than 40 days—contrary to their charter—all of which, in a petition to the king, they prayed might be corrected, by the strangers being restrained in these points;*—and that the mayor, aldermen, and commons might have their liberties. The king, on condition that they put the city under good government, granted, that no strangers should sell in the city or suburbs by retail—nor keep any house—nor be a broker there—saving always to the merchants of High Almaine, their liberties.

Year Books We have in this reign, an important case in the Year Books, relative to London.†

Upon an inquest before the mayor,‡ it was found, that a person had devised certain tenements in London to a woman for life—remainder to two of the best men of the

* Harg. MS. 21, p. 91, m. 143.

† Fol. 36.

‡ Vide etiam Lib. Ass. 49 Edward III., fol. 320 B. pl. 8.

Whitawyers in London, to find a chaplain. After her Edw. III. Year Book. death, two persons, as wardens of the guild, entered into the tenements, and found the chaplain; but the testator having died without heirs, the tenements were claimed for the king, as an escheat. It was answered, that, by the *custom* of the city of London, the people of each art could act as a guild or fraternity; and that devises might be made to them;—the king and his predecessors having confirmed all the customs of London. But it was replied, that such a fraternity could not commence without a charter from the king—and therefore the devise to them was void.

One of the judges said, that, although the commonalty of London is perpetual; nevertheless they cannot make a commonalty without the charter of the king. And the fraternity could not take an estate of frank-tenement; for if so, they could sue and be sued; which cannot be without especial charter of the king. That such fraternities were not perpetual, but *commenced by the will of the people of a particular art*—and *whoever wished, might relinquish it when he liked*;—but he who was one of the commonalty of London, was perpetually so, for the city is perpetual.

Holt contended, that, by the *custom* of the city, they might make such guilds of a fraternity of even two;—the king and his progenitors having confirmed the ancient usages and customs by charters. So that, if this was the *custom* before, it is the same as if it had been granted by the charter; that, by usage, the city could make statutes between themselves, and correct the law without Parliament. But *Candish* asked, if they had a charter of the king's to make a guild and fraternity forthwith as they pleased? To which the customs and the confirmation was answered, as before. But it was determined, that they could not call the charter in aid, unless it granted that privilege by express words.—With respect to the making of statutes, it was laid down, that they could not do so, to alter the course of inheritance; and it was denied that the devise could be good to the fraternity of the guild. And although it was admitted, that the *commonalty of the city was a body*, who could purchase

Edw. III. frank-tenement, and was perpetual—yet, as to such a fraternity as this, all might refuse to be upon it, but two or three, who might then claim to be the commonalty, which cannot be understood but of *many*.

But it was decided by the court, that *a commonalty of the guild could not be affirmed but by charter of the king*; and that it could not be adjudged to be a body to purchase an estate of frank-tenement: therefore they awarded the king should have execution.

This case is important in many points of view.

Guilds. It establishes that this fraternity was one of the adulterine guilds, to which we have before referred, not having any authority by charter from the crown: the doctrine, that the king alone can create such bodies, being fully and expressly recognized. And although it was argued, that the usage of making such guilds was included in the general confirmation of the customs of the city (an argument so frequently resorted to in the disputes relative to the rights of the citizens of London) still this doctrine also was overruled.

Commonalty. It was however stated, that the commonalty of London was perpetual—but the reason for it is given, “that the city is perpetual;” which is the position laid down by Madox, “that inasmuch as the inhabitants of towns would always continue in perpetual succession, so every municipal body was, by natural succession, perpetual, whether incorporated or not.” And as we find in this case, that the doctrine of perpetual succession is insisted upon—but referred to the perpetual existence of the city, and not to any peculiar right belonging to London, or other places, as corporations — this is again another proof, that the doctrine of incorporation was not at that time applied to *municipal bodies*; but their perpetual succession was accounted for upon other grounds.

From this case, therefore, as well as from the other documents, the most prejudiced must submit to the inevitable conclusion, that *London was not at this period incorporated*.

We next proceed to the charters of *Bristol*, from which we shall establish the same conclusion as to that city.

In the fifth year of this reign, we find a petition presented Edw. III.
to the king* by the mayor and burgesses of Bristol, against Bristol.
1331.
Thomas and Maurice de Berkely, for *compelling the burgesses*
by *violence* to do suit at their tourn. It is most probable
that the charter of this year was granted in consequence of
that petition. It recognizes the existence of an *immemorial*
court leet, and view of frank-pledge, and confirms it to them; †
—by which court it was, as we have before had occasion to
remark respecting other boroughs, that they were exempt
from the *jurisdiction of the sheriff in his tourn*; and did
their suit, real or royal, (that is, by taking the oath of
allegiance, and giving pledges for their good behaviour,)
within their own district. This duty was imperative upon
every inhabitant householder, wherever he resided; ‡ and
it was to be done in the county, if he resided in it; or
at the leet of the town or borough, if he resided within its
jurisdiction. Nor *could any body be exempted* by the charter
of the crown, or otherwise, from suit at the *sheriff's tourn*,
except he did that suit at some leet. And however this
matter may now be misunderstood or perverted, there can be
no question but the court here allowed to the *burgesses of*
Bristol, was that which gave them *their exclusive jurisdic-*
tion; and that the oath which is now administered to the
freemen on their admission, ought *legally, to be nothing more*
than the oath of allegiance; which alone is sanctioned and
required by the law, (with the exception of those added by
statutes;) for neither could the king by his charter, nor the
municipal government of the place, by any bye-law, impose
an oath which was not required by the law.

The charter we have alluded to, after confirming those of 1331.
previous dates, and providing for the goods of orphans, which
had been dissipated by their guardians, states, that by an *in-*
quisition taken by William Snareshall, and Robert de Ashton,
and returned into Chancery, it had been *found*, that the *bur-*
gesses, their ancestors and predecessors, *burgesses* of the same
town, from time immemorial had always view of *frank-pledge*

* Ryl. Plac. Parl. p. 258.

† 4 Inst. 72.

‡ Kitchen on Court Leets, *passim*.

Edw. III. *of the town and suburbs, together with all things appertaining to such view, of the men who dwelt in the same town and suburbs; that the burgesses being fearful they might be molested or impeached for the same, not having any charter for it—the king had granted to the burgesses, their heirs and successors, burgesses of the same town, that they should for ever have view of frank-pledge in the town and suburbs, with all things belonging to such view, of the men dwelling in the same town and suburbs, being unwilling the burgesses, their heirs and successors, should be hindered or molested on account of the aforesaid view in time past.*

1346. William de Colford appears to have been *recorder* of Bristol at this time, and with the mayor and 48 of the *principal inhabitants*, is said to have transcribed the ordinances and customs of the town,* in a regular series, with the bye-laws which had been subsequently added. But we have been unable to ascertain, that such a book is now in existence; had it been, we might have found illustrations of the admission of burgesses at this period, and the customs and usages of the place, as we have before done with Ipswich, Manchester and the Cinque Ports.

1347. A charter was granted at this period, in which the king recites, that many evil-doers and disturbers of his peace, wander and run about by day and night, in the town of Bristol, doing harms, mischiefs, and excesses to the people there; and desiring that the peace should be strictly kept, and the disturbers punished, granted to the mayor, *bailiffs* and *good men of the town* of Bristol, that they might have for *themselves and successors*, one place of confinement for prisoners within their town, in order to imprison any evil doers and disturbers of the peace, if any should happen to be found wandering about by night, in the same manner as is usual in London.

And the king gave power to inflict punishment upon those bakers who break the assise, as is practised in like manner with regard to such bakers in London.

The recital of this charter, states the proper grounds upon

* Corry's History of Bristol, 184.

which the king could in the exercise of his prerogative, as the Edw. III. chief repository of the executive power of the state, grant a charter to any particular place, to enforce the due execution of the law, and for keeping the peace within the town, which was the chief and expressed object of the greatest portion of our early laws; and which must be treated as the object of this charter.

It should first be observed, that this grant is to the *good men*, "*probi homines*" of Bristol, a term which we have before commented upon as used in all our early laws and charters, to express the general body of free people, sometimes of the county, hundred, wapentake, city, borough, or town:—and it seems a strange perversion of language to infer, that such a term can mean any thing but the "*inhabitants*" of the place, including all of them, and excluding all non-residents. If it is so treated, and the "*burgesses*" meant (as urged before) the "*inhabitants*," then this charter is granted to the same persons as the former charters, though under a different name:—but if the *probi homines* were a different class from the *burgesses*, then it is not granted to the same persons as the former, which is an inference highly improbable, particularly as the next charter of the same king, speaks generally of his confirmation of these before granted to the *burgesses*.

The assise of *bread*, mentioned in this charter, was a matter also inquirable at the *court leet*.

The *burgesses*, as appears amongst the records of chancery in the Tower of London, petitioned the king that the charter which he had granted to the *burgesses*, "that the town with its suburbs and precincts, should be a county of itself," might be confirmed by Parliament, with a perambulation of the bounds of the town—to them, their heirs and successors. 1373.

Bristol, at this period, received another grant from the king, who after confirming all previous charters,* which had been given to the *burgesses*, their heirs and successors, recites that the *mayor* and *commonalty* of the city, had petitioned and asserted that their town was situate partly in the county

* Rot. Cart. 47 Edw. III. n. 26.

Edw. III. of Gloucester, and partly in the county of Somerset, and that although Bristol was distant 30 miles from the towns of *Gloucester and Ilchester*, where the *county courts*, assises, juries, and inquests were taken before the justices, &c.; the *burgesses of Bristol* were bound to be present at holding the *county courts*, and taking of the assises, juries, &c., by which they were prevented from attending to their shipping and merchandise, &c.; the king in consideration of the sum of 600 marks, and by the assent of the skilful persons of his council, granted to the *burgesses*, their *heirs* and successors for ever, that the town of Bristol, with its suburbs and precincts, should be for ever in future alike separated, and in all respects *exempted from the counties of Gloucester and Somerset*, both by land and by water, and that it be a county of itself, and called the "county of Bristol." That the mayor should be the escheator. That the burgesses and commonalty, yearly should elect from themselves three persons, whose names under the common seal, should be forwarded to the king's council, who would make selection of one as a sheriff. That the escheator and sheriff should account at the Exchequer. That the sheriff should hold his county court monthly, as other sheriffs. That the mayor should hold his court, and the profits thereof to be for the use of the commonalty, as had been theretofore accustomed.

That no sheriff, or officer of other counties should intromit within the city and county of Bristol. That the mayor should swear before his predecessor, and not before the constable of the castle;—that the sheriff should take his oath before the mayor, so that they in no wise be forced to make their oaths out of the town.

That the mayor and sheriff might hear and determine civil causes, and determine felonies. That the gaol should belong to the burgesses, their heirs and successors, as well as infangthef and outfangthef. That felons taken with the mainour, should be tried. That no burgess, or any other person who should be in the town of Bristol, should plead, or be impleaded out of the town. That the mayor and sheriff should have cognizance of all pleas and trespasses. That pleas in

the Tolsey court, should be held before the steward, and no Edw. III. other justice should intronit.

The mayor should have power to take recognizance of deeds touching lands, &c. of any persons, married women excepted. That the mayor and sheriff might levy fines concerning lands, and tenements, and the estreats thereof should be delivered into the Exchequer; and that the mayor and sheriff should receive probate of wills, and put them in execution.

That *all writs* should be directed to the *sheriff, escheator, and coroner of Bristol*. And that the burgesses, their *heirs and successors*, should not be *burdened* to send more than *two men* to Parliament, as had been customary hitherto, which two men should be bound to answer for the same town and borough in those Parliaments, both as knights of the county of Bristol, and as burgesses of the town and borough.

That as to the customs or rules, &c., within the town of Bristol or suburbs, if there should be any difficulties or defects to which no remedy had been applied, the *mayor, sheriff and their successors*, with the *assent of the commonalty of the town, &c.*, should be empowered to elect successively from time to time 40 *men* of the better and *more honest men* of the same town, &c., which *mayor, sheriff, and 40 men for the time being, by their common consent*, should have power of ordaining and establishing any competent remedy that should be reasonable and useful to the commonalty, and to others who resorted to the town, &c.; and should be empowered to assess taxes upon the goods of all the men of the town. That the mayor, sheriff and 40 *men*, should have power to levy rates and taxes. That two honest *men* of the town should be appointed treasurers, and should be accountable before the mayor and others, to be deputed for that purpose by the *commonalty*. That persons disobedient to the ordinances of the mayor, sheriff, and the 40 *men* ordained by common assent, as premised, should be punished, &c. The charter then concludes with a confirmation of all previous privileges.

This charter introduces a new term, descriptive of the 1373. persons at whose request it was granted. It recites the former grants to the *burgesses*, and the petition of the

Edw. III. *commonalty*, complaining of the burgesses going to the county courts at a distance from Bristol, whereby the town was impoverished. The king in consideration of the good behaviour of the burgesses, and of 600 marks, grants by the consent of his council, to the burgesses, their *heirs* and successors, that Bristol should be separated and exempted from the counties of Gloucester and Somerset, and that it should be a county of itself; and directs that the mayor should be escheator:—that a sheriff should be annually chosen by the *burgesses and commonalty*, choosing out of themselves three persons, of whom the king in council shall choose one to be sheriff, and gives the sheriff a county court from month to month, as other sheriffs have. The profits of which court were to be to the use of the commonalty, as theretofore accustomed. The sheriff and escheator were to account in the Exchequer, and to be sworn in such manner, as not to be bound to go out of the town. The charter then grants the ordinary powers which were necessary to give full effect to the local jurisdiction of Bristol, and to exclude all other jurisdiction. And expressly provides that no burgess shall plead out of the town, or be convicted otherwise than by his fellow burgesses: a provision which could only apply to inhabitants, and would seem beyond all doubt to extend to all the inhabitants,—particularly as there is an express provision, that not only the burgesses, but any other person should be under the same protection as to tenures within the town, which would include all the persons who had not been sworn as burgesses; namely, peers, strangers, women, ecclesiastics, and minors.

There is also a non-intromittant clause as to other justices, and the king's officers; the return of writs is given to the sheriff, escheator, and coroner of Bristol. After which follows the singular clause which we have met with in no other charter, *that Bristol should not be burdened to send more than two men to Parliament, as had been customary.*

This provision may be accounted for, either by the fact that Bristol being situated in two counties, might be supposed to be liable to have two precepts sent to it; one from

each of the sheriffs :—or having been made a county of itself, Edw. III. it might have been supposed liable to send two members for their county, and two for their borough,—the latter is the more probable hypothesis, because, although Tamworth was situated in two counties, it never returned but two members to Parliament.

For the purpose of making additional regulations for the government of the place, the mayor and sheriff, with the assent of the commonalty, are empowered to elect 40 men of the better and more honest men of the town, (*de melioribus et probioribus hominibus villæ*,) who have authority given to them to do what may be useful to the commonalty, *and others who resort* to the town; from which form of expression it seems impossible not to conclude, that by the word “commonalty,” all the permanent inhabitants were included, and by the latter expression occasional residents and strangers.

The next clause, enforcing taxes upon all “*the men of the town*,” appears to confirm that conclusion; and tends to the irresistible inference that all the inhabitants were included; particularly as the same expression of “*men*” of *Bristol* is applied to the treasurers, who are to be persons of the town; and who must have been inhabitants. The same observation applies also to the power of punishment given to the mayor and sheriff, which must necessarily have been confined to residents within the town, because the jurisdiction of those officers was limited by its boundaries. Nor can any doubt be entertained from the whole context of this charter, that its object was to regulate the local jurisdiction for the benefit and government of the inhabitants of the town. The clause appointing the select body of the 40 better and most honest men, is probably the origin of the common council; and it should be observed, that the clauses which relate to the select body and their functions, do not in any manner refer to the existence of such a body before this time, and as this is within the time of legal memory, it is clear that there is *no prescriptive or select body or common council in Bristol*.

Edw. III. The purpose for which this body was created, was in effect to make bye-laws for the correction of any difficulties which should from time to time arise out of the usages or customs of the town,* as was granted by a charter of the same king in the 13th year of his reign to the city of London. The king himself had no power to make such bye-laws, and consequently could not give it to others;—the body of the inhabitants had such a power as has been recognized in many cases for their own regulation, and if they thought fit, could delegate it to others; and consequently could assent to its being exercised by any portion of themselves. Hence by the acceptance of this charter of the king, containing such a provision, they in effect give their assent to that delegation, which however it should be remembered, does not originate in any power of the crown, but is an act emanating from the inhabitants; and therefore this clause, empowering the mayor and sheriff to elect the 40 men, takes its effect from the assent of the commonalty; for without such assent, the mayor and sheriff, who were merely the officers of the crown, could not have the power, neither could they acquire such authority from the crown. It is true that the words of the clause are capable of the construction, that the assent of the commonalty should only be necessary for establishing that there should be such an election, without giving them a voice in it;—but this would be a forced construction, in opposition to the general law;—the general scope of the charter;—and the reason of the thing. And a subsequent clause, speaking of the ordinances, describes them as made “by the common consent, as premised;” so that upon the whole, we conceive the authority of these 40 men, though mentioned in the charter of the crown, in fact emanated from the *inhabitants at large*; and by the fair import of the clause, they were to be elected by the consent of the whole commonalty,—*that they existed solely at their will*; and could at any time be destroyed, and *their authority annihilated*, by the act of the *commonalty*.

The same observations apply equally to their power of

* 8 Co. 24.

taxing the *men* of the town, who could only be the inhabitants, for they alone could be affected by the acceptance of this charter; they only could be intended by the term "men of the town," with reference to this subject of taxation;—they were evidently included under the words, "all men of the town," and the *assent of the inhabitants* was indispensable for the grant and exercise of this power. Edw. III.

Indeed the real purport and object of the clause is merely this; that inasmuch as raising money upon the subject was lessening their means of paying taxes and debts to the king, every tax or levy was indirectly in derogation of the rights and prerogative of the crown, and therefore the king could call any person to account for making any such levy or taxation; on which ground, to protect the mayor, sheriff and the 40 men from any proceeding on behalf of the crown, for making such levies and taxes, the king allows them to do so without the impeachment of himself, his justices or officers.

It is also confirmatory of this construction, that the money collected is to be expended for the good and profit of the town; and that two treasurers are to be answerable before the mayor and persons deputed by the commonalty.

It must not be overlooked, that notwithstanding the particularity of this charter in many respects, there is no mention whatever of any mode of electing, admitting or swearing the burgesses; but the class of persons of whom they were to consist, is still left to be ascertained from the general law, and the general scope of the charters.

This king also granted in the same year, letters patent to commissioners for the purpose of *ascertaining the exact metes and bounds* of the town and counties of Gloucester and Somerset.

The report of the commissioners' perambulation was exemplified by letters patent, and with the charter of this year was confirmed by Parliament; although it does not distinctly appear so to have been from these documents, for it purports only to be the charter of the king, and merely recites the confirmation by Parliament; yet there is no doubt it was so confirmed.

Edw. III. During the 7th year of Richard II., about 10 years after this grant, the charters and privileges of London received parliamentary confirmation, which was recognized as of binding authority, 7 Henry IV. c. 9: *—and also in the city of London's case against Wagoner, † decided during the 7th year of James I.:—it was again asserted in argument upon the quo warranto in the reign of Charles II.; and although the decision of that case militated against the argument, still as that judgment was declared illegal by statute, the charters of London have ever since been assumed to rest upon parliamentary confirmation.

There are also other places where the charters have been enforced by Parliament; and if such a confirmation actually exists as recited in this charter to Bristol, of which there can be no doubt, then it is clear that there is a parliamentary confirmation of all the former privileges of that place, and the charters previously granted to the burgesses—and, being so, upon the clear principles of law, as well as the authority of the King and Miller, ‡ and other cases, these privileges could not be afterwards altered, either by the charter of the crown, the assent of the burgesses themselves, or by both conjointly; or, indeed, by any power but by Parliament. So that at least, as far as regards Bristol, when it was afterwards incorporated, that circumstance could not alter the class of the burgesses, "*the free sworn inhabitant householders*," whose privileges had before received the indelible stamp of parliamentary sanction.

UNIVERSITY OF CAMBRIDGE.

In the first year of this reign we find the king confirmed all the previous charters to the *University of Cambridge*, and added also the following privileges. §

First, providing against forestalling, and referring for that purpose to the charter of Henry III., to the clauses of which, relative to injuries done to the clergy or laity, and imprisonment for them, reference is also made—and all the provisions of the former charter are expanded and amplified.

* Vide 4 Inst. 249. † 8 Co. 242. ‡ 6 T. Rep. 268. § 1 Pet. MS. 1096.

The clerks having lay fees are mentioned ; and the students, Edw. III. described as privileged so long as they apply themselves to their studies there, and laudably proceed in them under their clerical habit, from being placed in assises, juries, or recognizances. The killing of the scholars is provided against—and the liability of the burgesses for all who are within their families, is repeated—and the special provisions with respect to the assise of bread and beer. The mayor and bailiffs are directed, upon the sentence of the vice-chancellor, to convey to prison all those who are convicted of any injuries ; and if it is necessary, that they should take with them the posse of the town.

The attention of the reader is here again directed to the mode in which the common law jurisdiction, and authority of the municipal magistrates were called in aid, to carry into effect the judgments of the vice chancellor—so as to make them subservient for the purposes of his jurisdiction.

The same king also granted in this year,* to the chancellor and scholars of the university, and their successors, that in all clerical causes of the same university, and in all mutual contracts arising in the town of Cambridge or the suburbs, the king's prohibition should not lie for the future—but that those causes should be decided by the chancellor for the time being, or his deputy ; and the burgesses are made responsible for their families and servants in all purchases, &c. 1343.

In the 50th of Edward III., error on a record was brought into Chancery from Oxford.† It was stated by the bailiffs, that no burgess of that town should implead or be impleaded of tenements within the borough, but before the mayor and bailiffs : and it is said, that these franchises were granted by King Henry, in a charter which gave them cognizance of all manner of pleas, but contained no precise words as to fines. It was asserted, that from time immemorial, before the charter of King Henry, they had a mayor and bailiffs of

* Rot. Pat. 17 Edw. III. m. 23. 1 Pet. MS. 101.

† Lib. Assisarum, fol. 325, 50 Edw. III.

Edw. III. Oxford ; and were used to plead of their frank-tenements in the *hustings*. And it was held, that they could not levy fines, without express grant to that effect.

Coventry. 1327. A charter of this date granted, among other liberties and franchises, to the then *burgesses of Coventry*, that if any *inquisition* ought to be taken before the king, or his justices or ministers, for any contracts, &c. made within the same town—concerning lands, &c. within it—the same should be taken by the *burgesses and men of the town*, and not by *foreigners*—so that such contracts, &c. should not concern the king, nor the *commonalty* of the town. Which charter recognizes the exclusive jurisdiction of Coventry, and the distinction between its burgesses and foreigners, or strangers to the borough.

1334. The same king, wishing the quiet and tranquillity of the *merchants of Coventry*, that they might the more securely take care of their businesses, granted to the merchants, that they, their *heirs and successors, merchants of the town*, for ever should be quit of toll, paviage, pontage, and murrage, for their wares and merchandises throughout all the kingdom.

Notwithstanding at the commencement of this reign, a charter had been granted to the *burgesses* of Coventry, yet we have here a separate grant to the *merchants* of that town—a more decisive refutation of Brady's doctrine, or a more striking illustration of the *distinct character of those bodies*, for which we have throughout contended, could not be expected.

Yet the reader will be surprised to find, that, upon the pressure of the assessment for the ninth and fifteenth, which the Parliament had granted to the king, about six years afterwards, *the men of Coventry alleged, that they were not a city or borough*—which irresistibly establishes another principle for which we have contended, that the question, with reference to any place, always was—whether it was excluded from the county as a borough—or not being so, was to be treated as part of the county—or, according to the

language of the statutes in this reign, "a part of the gild-
able." Edw. III.

The roll of *Fines* of this year contains a writ,* directed 1340.
assessoribus et venditoribus nonæ et quintadecimæ of the
county of *Warwick*, and reciting the complaint of the *men of*
the town of Coventry, that it *not being either a city or borough*,
but the *men of* the town being accustomed to be taxed with
the *commonalty* of the county, and not as *citizens* or *burgesses*,
—and that of the last fifteenth they had paid only 50*l.*, and
that, by various misfortunes, they were so destitute that
they could hardly support themselves—whereupon the writ
commands that they shall pay only 100 marks a year for
their fifteenth or ninth. Provided that they render the ninth
garb, the ninth fleece, and the ninth lamb—according to the
grant of the commonalty of the county.

In this document the term "commonalty of the county,"
is applied precisely in the same sense in which we have
seen it before used, with respect to cities and boroughs.

However, notwithstanding this writ, we find the mayor 1346.
and bailiffs insisting upon their separate jurisdiction six
years afterwards, by demanding cognizance, and showing a
charter to that effect; and the franchise was disputed by a
stranger.†

In the first year of the reign of Edward III., that king, by 1327.
a charter given at Nottingham,‡ and directed to the *bailiffs*
and *good men* of the town of *Evesham*, states, that, at the
request of Roger Mortimer, he had granted, in aid of paving
the said town, for three years, that they might take, by the
hand of their deputies, of all saleable things coming to the
same town, the customs there enumerated. Although it
seems from this charter, that bailiffs were then existing
in the place, of which no mention had been made before,
yet there is still no trace of its being a borough; but the
people there are called the *good men of Evesham*, and *not the*
burgesses. Evesham

In this year, as in the 23d Edward I., Tindal gives, in his 1338.

* 1 Pet. MS. p. 120 B. † Rot. Cart. 20 Edw. III. n. 16. Jenk. 18.

‡ Rot. Pat. 1 Edw. III. m. 2.

Edw. III. History of Evesham, the names of Richard de Trapenhall, Richard de Nowbury, and Robert de Tredon, as the members returned; but for the reasons given before, the fact is very doubtful.

1341. It seems that the sum collected under the former charter of this king, within the three years limited by it for the collection, was not sufficient to complete the purpose for which it was intended, and therefore the same king, in the 15th year of his reign, renewed the former charter for two years longer:—the second charter being granted, like the former, to the *bailiffs* and *good men* of Evesham.

1332. A grant of Edward III. of this date, reciting the former charters, and the previous *dispute* which had arisen between the *burgesses* of *Great Yarmouth* and the *men* and *tenants* of the towns of *Little Yarmouth* and *Gorleston*, and the decision of the council thereupon, confirms that determination, for the purpose of removing all doubts, and declares that it extends to all persons, as well *natives as foreigners*, saving only the rights of the city of *London*, *Norwich*, and the *Barons of the Cinque Ports*, and of all others who have any thing by charters of earlier date.

It should be observed of this charter, that it speaks of the *burgesses* of *Great Yarmouth*, and the *men and tenants* of *Little Yarmouth and Gorleston*, which are before said not to be boroughs, as of distinct classes, and as contradistinguished the one from the other: and the *burgesses* are described by the name of *commonalty*; the real import of which has been before defined in a former part of this work, and may be more particularly ascertained with respect to this borough, by the subsequent decision, in 1660, as to the persons who were entitled to vote in parliamentary elections as the *burgesses*. And it appears, that in the 31st of Edward III. the return to Parliament for this borough was made by the *bailiffs* and *commonalty*.

1357. *Lynn.* We have been favoured by Mr. Gurney with an inspection of extracts from the early documents of the borough of *Lynn*, (in the possession of the corporation,) which enables us to present the reader with some records of this reign, as

illustrative of the charters to this place which we have had Edw. III. occasion previously to quote.

It appears that in this year it was agreed by the burgesses in the guildhall of Lynn, that 12 *men* (probably the leet jury) should be sent to the prince for *all the commonalty*, to speak concerning the affairs of Lynn. 1344.

The armed men sent to the king gave pledges—as the suitors at the court leet and the members to Parliament were wont to do. 1347.

And by a record in the same year, it appears that the Bishop of Ely* had obtained a view of frank-pledge, with all its appurtenances, of his men and tenants in the town of Lynn, and cognizance of pleas to be held every week, from the mayor and commonalty of the town, in the time of King Edward. That the bishop had granted the same to the mayor and commonalty for an annual payment as long as it should please the king, in the same manner as he held it before it was seized into the king's hands.

A coroner for the town, and a keeper of the key of the treasury, were chosen by the 12 *jurymen*. 1361.

In this year, a person who upon pain of breaking his oath which he had taken to the mayor and commonalty, when he entered upon his freedom, and upon pain of the loss of his liberty, having been many times summoned, but not appearing, by the assent of the mayor and commonalty, was deposed and expelled from all meetings in future: and was to be considered as a *foreigner*, and *not a burgess*; nor to enjoy any of the liberties granted to the burgesses of Lynn; and no one of the commonalty was to associate or trade with him. 1376.

The *burgesses* to *Parliament* were also chosen by them, upon two several occasions in this year.

Here we find the jury of the borough performing all the public functions within it, and choosing the proper officers for all purposes:—not electing according to the modern acception of the word, and guided only by *caprice* or *interest*,

* Rot. Fin. Tur. Lond. m. 8. 2 Pet. MS. 86.

Edw. III. but choosing under the sanction of the law, and their oaths, according to the qualifications of the person, and the propriety of the selection.

Tamworth.
1330. A charter was also granted to *the men and tenants of the half of the town of Tamworth*.* It commences with an inspeximus of the letters patent of King Edward, father of Edward III., to his men and tenants of half of the town; and it grants the half of the town, which was of ancient demesne, to them, *their heirs and successors*, with all liberties belonging to it, according as they and their ancestors had reasonably held the same;—rendering from thence annually as they hitherto have been accustomed to render, and 20s. of increase—saving talliage, aids, and other customs.

Worcester. Worcester, in the 4th year of this reign, obtained a confirmation of all previous liberties; and the citizens received an increase of them, by the justices of the peace and assise being empowered to hold their sessions within the walls of the city, and exempting them to answer for any thing without the walls during this reign.

Dorchester.
1331. The king also granted to the burgesses of *Dorchester*,† their borough at fee-farm, for 10 years—to the intent that they might not be disquieted by any custos of the borough. So that it is apparent, that the burgesses of Dorchester can have no right to any prescriptive claims—particularly as
1337. we find that, in the 11th year of Edward III.,‡ they petitioned, that they had held their borough at fee-farm of 20*l.* for certain terms of years. And that it would not be to the damage of the king, nor others—nor to the diminution of the farm of the county—if the king were to grant the borough to the burgesses at fee-farm, with the liberties and free customs belonging to it. The king accordingly gave the borough to the burgesses, their *heirs*, and successors, for ever, at fee-farm, with their liberties and free customs.

1337. This king granted the custom of things sold at *Newcastle*—

* Rot. Pat. 4 Edw. III. m. 32.

† Mad. Fir. Bur. 20.

‡ Rot. Cart. 11 Edw. III. n. 26. 4 Bro. Will. 550. App. &c.

upon-Tyne for seven years, towards the building or reparation Edw. III.
of the walls and fortifications of that town.

In the year following, this monarch pardoned and remitted
to the *burgesses* of Newcastle-upon-Tyne, all debts and
arrears that were owing to him or his progenitors; as a re-
compense for the great losses they had sustained by the
frequent incursions of the Scots: all *debts*, as well of green
wax as arrears of farms, or those otherwise due by the
summons of Exchequer were forgiven them; as also for-
feited rents and chattels of felons, with every thing which
they owed to the crown—except debts for victuals, which
they had purchased of the king's father.

1323.

Edward III., in the 7th year of his reign, granted a
charter to the *burgesses of Newcastle*, regulating the election
of their magistrates, and of the other officers of the place—
but it does not mention the *mysteries*;—they may there-
fore perhaps be assumed to have been first established
some time between this date and the making of the articles,
by the burgesses in guild, for the government of the town,
in the 16th of Edward III.; and which were confirmed
by that king—who having seized the town into his hands,
re-granted it in this year, by a charter to the townsmen, in
consideration of their having fortified it.

1333.

1342.

The articles providing for the time and entry, and the assise
of bread and beer, gave the fines to the mayor and 24 of the
town—and allowed to 24 of the most respectable brethren
of the 12 *mysteries*, a participation in the election of mayors
and bailiffs, and in auditing the accounts of the town—and
provides, that the *common seal* should not be used without
their consent. The assessors of the taxes were to be chosen
from amongst them; and they were to be the depositories
of the usages and customs of the borough. All showing,
that, at that time at least, the men of the 12 mysteries, were
of considerable public importance in the place, and ma-
terially instrumental—either as burgesses or as persons of
considerable influence—in the government of the town.

It should however be observed, that the method for the
election of mayor, prescribed by the articles of 1342, 16th of

Edw. III. Edward III., and which in effect vested the election in persons selected from the 24, was, in the 19th of Edward
 1345. III., upon the seizure of the liberties of the town, in effect revoked, by the grant of a new charter, which provided another mode of election, in which the *members of the mysteries* did not as such take a part.

1346. In the 20th of Edward III., the next year, the liberties were again restored; and an ordinance was made as to the manner of *choosing the mayor and other officers*:—and more particular directions were given in the charter.

1358. In this year, the king granted to the burgesses the royalty of Castle Field and Castle Moor, an extensive tract of land to the north of that town, the property of which belonged to them.

The burgesses in their petition to the crown for this privilege, to empower them to dig mines of coals, and work stones there—set forth, that these places were the soil of that town, which, although they had been held from time immemorial, with their appurtenances, by them and their predecessors, by a fee-farm—yet they apprehended, that as no express mention was made of them in any charter, their right to them might be called in question; and pleaded at the same time, as a ground for the grant, their distresses by the former wars, and the late very grievous pestilence.

1384. In this year a confirmation of liberties was granted to the
 Nottingham. burgesses of *Nottingham*, and their *heirs* and *successors*, burgesses of the same town, with the additional clause for the amelioration of the town, and the advantages of the burgesses; and in order that they might the more peaceably transact their business therein, that none of them should plead or be impleaded out of the borough concerning the lands and tenements which were in the borough, or concerning trespasses or contracts;—that they should not be put with strangers in assises, juries, or any inquisitions, by reason of tenements, trespasses, or other foreign business whatsoever;—nor should strangers be put with the same burgesses upon assises, juries, or inquisitions.

And that the same burgesses, by charters, have the returns

of writs and summons of the Exchequer, of all things concerning the said borough;—that *no sheriff, bailiff, or other ministers whomsoever*, should enter the borough to execute summonses, attachments or distresses, or other offices there, *unless in default of the bailiffs* of the town for the time being. And also that the *burgesses, their heirs and successors*, should be for ever quit of murage, pavage, stallage, taveage, keyage, lastage, and passage throughout the kingdom.

Baldwin de Redvers granted to the burgesses of *Plympton*,^{Plympton. 1339.} their town; with the market, fair, and every thing thereto belonging; to hold at a yearly rent, as fully and freely as the citizens of Exeter; and that the burgesses should be free of toll.

By an inquisition of *ad quod damnum*, taken at this date, it was certified, amongst other things, that the *town of Poole* was a *free borough*; that the *burgesses* had been accustomed to receive, time out of mind, the port duties therein specified, in aid of the farm of that borough; and that it would not be to the prejudice of the crown or others if the crown granted a charter of the aforesaid customs to the *burgesses of Poole, and all customs and liberties which the burgesses of Melcombe* had by charter or grant from the crown.

There is a return of *members to Parliament from this borough** of this date, but the *electors* are not mentioned; the names of the members only being indorsed on the sheriff's general return for the *whole county of Dorset*; as was usual at that time. As however the writ is *general* to the sheriff, to *return two burgesses* from each borough, there can be no doubt that the election was *by the burgesses*, who were to *select two of their own body*; and then the question returns, as it ever must, to the same point, who were the burgesses at that time? as the same class must still continue to form that body. Is there any pretence for saying they were then corporators? and can any other class of persons be suggested, but, according to the primary meaning of the word, "the inhabitants of the borough."

There is in this year, a confirmation by W. de Monteacute,^{1371.}

* 2 Prynn's Parl. Writs, p. 48.

Edw. III. lord of the manor of Canford, of the charter of Lord William de Longespee. The confirmation also grants to the *burgesses and their heirs*, amongst other things, the defaults of the *assise of bread and ale broken*, as also the amercements of measures: but reserved to William Longespee, that from thenceforth the fine of half a mark should be paid to him at the first court day: and the fine of 18*d.*, to be paid at the other five courts of the lord before the steward yearly, should remain to the *burgesses and their successors* for ever.—It further provided, that the provost should be called "*mayor*," and should have the *government of the borough as the provost had hitherto*.

made

The fines mentioned in this charter had been paid, together with the chief rent, and a further sum of 10½*d.* for a pound of wax and a pound of commin, in the whole 6*l.* 11*s.* 8*d.*, by the inhabitants of Poole to the lord of the manor of Canford. What particular advantages were to be derived by the burgesses from the "*reeve*" having the Norman name of "*mayor*," instead of his Latin name "*præpositus*," it is difficult to say; unless it was to make the head officer of the borough less like the inferior officer, of reeve or bailiff of the lord. At all events, for the reasons previously given, this name of the head officer did not import a corporation, or any corporate rights.*

It should be observed, that in the return by the sheriff of Dorset, the members for the county are stated to be returned *pro se et communitate comitatus*; and those for the borough, *pro se et communitate dictorum Burgensium*.—So that, unless *communitas*† imported an *incorporation of the county*, it could not do so of the borough; and even if it does, it imports a corporation of all the boroughs, some of which certainly did not, and do not, return by the *corporation*;—as *Shaftesbury*,—and *Bridport*.

Sandwich. This king granted another charter to *Sandwich*, inspecting

* There is a document in the Canford Court Records, where the word "*præpositus*" is thus translated, "*Anglicè Reeve*."

† The *communitas comitatum*, was a common expression as early as the reign of 12 Edward II.

the *letters patent* of the *Lord Edward*, and reciting, “that the *steward and marshal of the household* of the king, and the *clerk of the market*, and certain other ministers of the king, lately came to the town; that the said steward and marshal there held pleas, and made various *attachments and executions* of the same; that the clerk of the market, and divers ministers, exercised their offices, and committed *divers oppressions and grievances* against the liberties of the town, of old time used, to the prejudice and weakening of their liberties. The king being unwilling in any thing to diminish those liberties, but rather to confirm them, granted, that the coming of the *steward, marshal, and clerk of the market*, and others his ministers to the town, and their entering into the same, exercising their offices against the liberties of the town, to the oppression and grievance of the *mayor and barons, and others of the town*, should not in future be injurious or prejudicial to the *mayor and barons, their heirs or successors*, or to their liberties; but that the mayor and barons, their liberties and privileges before the coming of those ministers, by them and their predecessors used, should hereafter fully use and enjoy, without hindrance or impediment.”

Edw. III.
1343.

This charter is extracted more at length, as it contains a minute description of the proceedings of the clerk of the market, and other ministers of the crown.

Some years afterwards, this king confirmed the charters of King John, Henry III., and 18th of Edward I., as to the orphans; and also the confirmation of Edward II., to the *barons and men* of Sandwich, their heirs and successors, with all their rights, &c.

The *citizens* of *Norwich* applied in this year for a grant of all the *royal jurisdictions belonging to the fee of the castle*.*

Norwich.
1344.

In consequence of which, the next year, commissioners were appointed, before whom a writ of *ad quod damnum* was executed, concerning the fee of the *castle of Norwich*, to ascertain whether it belonged to the crown or the *Earls of Norfolk*; when it was adjudged, that it belonged to the king,

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* Rot. Cart. 19 Edw. III. n. 10.

Edw. III. and that the *earls* only held *as his constables*: upon which the castle was confirmed to the *sheriff of Norfolk*, to keep the prisoners in; and as such, continues annexed to the county of Norfolk, for a *county gaol*. The return also stated, that the *jurisdiction* belonging to it *might be granted* to the *crown*, except the *12d.* arising from the pleas of that jurisdiction. And the king being also informed, that the *inhabitants of the castle ditches*, being in the fee of the castle, were not taxable with the city, but exempt from the *bailiffs*, and out of the city jurisdiction; and that often when citizens were indicted for felony, they took refuge there to avoid justice—being screened by the sheriff of the county;—the king therefore granted to the citizens, the jurisdiction of all places inhabited about the ditches of the castle, which were of the fee of the castle; and that these should be of the same nature and condition as other places and tenements of the citizens, in the city aforesaid; the house called the shire-house where the common pleas of the county are held, only excepted. Thereby giving to the citizens the same jurisdiction with respect to those places, as they had before possessed over the rest of the city.

This document also appears to define the respective jurisdictions of the borough and the castle, more distinctly than they are usually specified; and it is also a decisive confirmation of the doctrine we have before asserted, that the castle was distinct from the borough.

Hunting-
don.
1363.

A charter of this date recites, that King Edward, considering the town of *Huntingdon*,* by the pestilence and other calamities, was so decayed and depopulated, that the fourth part of it was not *inhabited*, and those few which were left, had scarce any thing whereof they could subsist; nor did any lands or rents belong to the town, whereof they might raise any profit to help them to pay to the king the fee-farm rent, and that the town would be left altogether desolate without *inhabitants*, unless it were relieved.

The king therefore, being willing to relieve the town as much as in him lay, did grant and confirm, that the *burgesses*

* Rot. Cart. 37 Edw. III. n. 5.

should for ever after have the cognizance of pleas, as well of assises of novel disseisin and mortdancester, and all other pleas touching freehold, as of trespasses, covenants, contracts, and plaints there arising, as well of the tenants and residents as of all other persons. Edw. III.

That they should have all fines, ransoms, and issues forfeited of all persons, as well *within the town*, as others who by reason of any plea or plaint touching freehold, or of any personal action arising there, as well before the king's judges, and other justices, barons of the exchequer, and before the *steward and marshal*, and clerk of the market of the king's house, and before the sheriff's escheators, and all other the king's officers and ministers. Also that they should have all goods and chattels of felons, fugitives, and of outlawed persons, as well of tenants and residents there, as of strangers and others who should happen to be found within the said town; so that it shall be lawful, immediately after they shall be convicted, for their bailiff to levy and collect the same, and to take possession thereof, and retain them to their own use, to aid them in the payment of their fee-farm rent, without the hindrance of the king, or his sheriffs or other officers, and without any account or reckoning to him.

From the expression "desolate without *inhabitants*," and the general import of the recital of this charter, it is clear, that the increase of the actual population of the place, was one of the principal objects of the grant.

"Tenants and residents" are both mentioned; but there are abundant authorities to show—and the history of boroughs in general establishes the same point—that it was in respect of *residence*, and not of *tenure*, that persons were *burgesses*. The tenants, are only so called because they were of a higher class than the ordinary householders; but still it was necessary that these tenants should be *resident*. The addition of "all other persons," shows clearly, that there were other *occasional inhabitants*, not fixed *residents*, who were to be subject to the *civil* jurisdiction of the borough court; but they would not be liable to do suit at the *court leet*; or to contribute to the burdens of the borough; except as to the

Edw. III. latter by express stipulation, as was often the case with those admitted by purchase, or by favour, into the freedom of the boroughs or cities.*

It is also clear from the subsequent part of the charter, that the term "tenants" must mean resident tenants; because otherwise the chattels of felons could not be seized by the officers of the borough; inasmuch as being out of the borough they would be without their jurisdiction.

This king also, by another patent, states, that the *honest men* of his town of Huntingdon had prayed him, that whereas they were charged 20*l.* of increase beyond the sum they rendered yearly for the fee-farm rent, by reason they had not received any thing from the fair at St. Ives, they were so much impoverished they could not pay the said 20*l.* The king, pitying their state, respited to them the 20*l.*, during pleasure, or until, from the state and amelioration of the town aforesaid, the king should otherwise ordain.

It should be remarked upon this document, that the grant of the fair at St. Ives, in the time of Henry III. is to the *burgesses*; and, this last document, being on the petition of the *men* of Huntingdon, they were, consequently, synonymous terms.

By a patent, reciting the charter of Henry III., and that—although the fair of St. Ives was still disused—and from the *terror* of pestilence and various other adversities, the town was debilitated and destroyed, nevertheless the rent of increase was charged and collected of the poor *men* of the town, without any remission, to their no small damage and impoverishment; whereupon they besought the king to afford them a remedy; who, being informed of the same, compassionating the state of the said *burgesses*, and willing for the relief of the town largely to provide, remitted the said increase of 20*l.*

In a charter of Edward Prince of Wales, which was confirmed by Richard II., in the 7th year of his reign, to the

* See the admissions to the freedom of Ipswich, as extracted from the Domesday Book of that town.

prioress and nuns of *Chester*,* it was granted, "that all the *men and tenants* of the said nuns at will, or for term of years, who are within the guild merchant of the city of Chester, or sworn to the liberty of the town, should not be put upon juries and assises, inquests and recognizances, or to make appearances before the mayor and sheriffs of the city of Chester:"† but should be free of tolls, &c. &c.

Edw. III.
Chester.
1358.

In this year Philippa, wife of King Edward III., confirmed the grant to the Bishop of *Bath and Wells*, the dean and chapter of the church of St. Andrew in Wells, and the prior and monks of Bath, excusing them and their successors from payment of toll, piccage, pannage, and kayage of all manner of things in any part of the kingdom; and more particularly excused the *burgesses* of Wells, Axebrigge, Welynton, and Chard from those payments:—also all the *natives* of those boroughs.

Wells.
1365.

The charter to *Queenborough*,‡ is worthy of observation, as it appears to be given upon the first foundation of the town.

Queen-
borough.
1368.

It is described in the margin as a grant to the "*burgesses*," and recites, that the castle and town were begun to be built near an arm of the sea; and that it was proposed to name the place the Queen's Borough; and that a greater concourse of people might more readily come there and *dwell*, it grants the following liberties to the *inhabitants*, for their greater security, comfort and quiet.

That the town should be a *free borough*, and the "*men*" of it *free burgesses*:—that they should elect annually from amongst themselves one mayor and two bailiffs, and should have two markets and two fairs:—that the *burgesses* and their successors should not implead, or be impleaded, elsewhere than within the borough:—that they should have cognizance of all tenures, trespasses or contracts within the borough—*infangthef* and *outfangthef*—quittance from toll, &c.—and *shires and hundreds*:—that the *burgesses* should not be put

* Harl. MS. 201, p. 188.

† In Fisher and Batten, 1 Vent. 155, it was said by the counsel in argument, that Henry, father of John of Gaunt, was the first Duke of Lancaster, and was made so in the time of Edward III. and then Chester was made a county palatine.

‡ Rot. Cart. 186, 42 Edw. III. n. 8.

Edw. III. in any assises, juries, &c. so long as they be *inhabiting* the borough as burgesses:—that *foreign* men should not be put with them in assises, juries, &c. within the borough:—that the burgesses, their heirs and successors, *inhabiting and to inhabit* the borough, be quit from talliages, &c.—with cognizance of pleas, and quittance of prisage—and non intromittant clauses as to the warden and barons of the Cinque Ports, justices, escheators, sheriffs, and other bailiffs of the king.

A supplemental charter was also granted in the same year to provide for the government of the town, till the proper time came round at the next Michaelmas for the election of the mayor and bailiffs.

But notwithstanding both these charters were granted, the first creating it a borough, and the second recognizing it as such, it never returned members to Parliament till 1571, the 13th of Elizabeth—203 years afterwards. Affording a striking instance, that the *charter of the crown* alone was *not sufficient* to entitle a town to send members to Parliament, although it was expressly created a borough.

Kingston-upon-Hull

The charter to *Kingston-upon-Hull** of this date, commences with a recital, that, for the amelioration of the town of Kingston-upon-Hull, and for the utility and advantage of the *men* of that town, the king had granted it should be a *free borough*, and the *men* of the town should be *free burgesses*, with all liberties and customs to a free borough belonging; so nevertheless that it should be kept by some faithful man, elected by the king to preserve the liberties of the borough, first taking his oath, &c.—That the burgesses, their heirs and successors, might have the return of writs—plead and be impleaded within the borough only:—and the privilege of choosing a coroner from among themselves—with *infangthef*—*outfangthef*—*toll*—*pontage*—*passage*—*pavage*—*murage*—is granted to the burgesses and their *heirs*; and that all those of *the borough wishing to enjoy the liberties thereof*,† should be at *gild* and *scot* with the burgesses when the borough should be talliaged.

* *Mad. Fir. Bur.* 272, note G.

† See the Cinque Port Charters; *Rot. Cart.* 22 *Edw. III.* n. 31.

A grant of this date confirmed the former charters to Edw. III.
Canterbury;^{*} and further provided, that neither the steward, Canter-
 marshal nor clerk of the market, nor any other officer, should bury.
 thereafter in anywise intromit themselves to exercise or per- 1348.
 form their offices within the liberty of the city: saving al-
 ways, that the chancellor, or treasurer, or high-chamberlain,
 when they, or any one of them, should happen to come per-
 sonally to the city, might jointly and severally once or twice
 in the year, as need should be, inquire of the defects of the
 city belonging to the royal cognizance, and reasonably
 correct and amend the same. And recited, that, in the
 charter of Henry III. it was contained, that none of the
 citizens should implead or be impleaded without the walls
 of the city for any plea except pleas of foreign tenures; and
 as in the recited charter no mention was made before whom
 pleas arising within the liberty of the city ought to be
 holden; the king declared that pleas arising within the li-
 berty of the city, should thereafter be holden within the
 city, before the *bailiffs* for the time being, in manner as
 had been before used.

In this year a commission† issued to four commissioners,
 upon the complaint of the *Archbishop of Canterbury*, to in-
 quire, whether he and his predecessors, and their *men and*
tenants, had for time immemorial been *free of making con-*
tribution for the expense of the knights (militum) coming to
 Parliament, for all their lands and tenements in the county
 of Kent, held in gavelkind, as well as in any other manner;
 and in the meantime all distress of them for such purpose is
 superseded.

The king granted, that the men and tenants of Canter-
 bury,‡ holding their lands in the county of Kent, as well
 in gavelkind as in any other mode, should be quit of contri-
 bution for the *expenses of knights* to Parliament.

In this year, *Cornwall*, to which we have particularly Liskeard.
 referred in the reign of Edward I., was by act of Parliament, 1337.

* 1 Pet. MS. 93 B.

† Pet. MS. Charters, Inner Temple Lib. vol. i. p. 99 B.

‡ See post. Rot. Parl. 1376, 60 Edw. III.

Edw. III. erected into a *Duchy*, and the king's eldest son, Edward the Black Prince, was invested with it, who granted a charter to *Liskeard*, which is recited by inspeximus in the charter of Queen Elizabeth, and is as follows :

“ Edward, &c.,* Prince of Wales, Duke of Cornwall, and Earl of Chester, to our steward and sheriff of Cornwall, &c., &c. We charge and command you, that you do not suffer that the *burgesses of Liskeard be impleaded without their franchise*. Edward III. with the assent of his council, accepted, approved of, and ratified, the said grant to the said *burgesses*, their heirs and successors, &c., &c.”

Common-
alty.

And there was a petition from the *commonalty* of the county of Cornwall against the undue exercise of the *franchises*† of tinnors.

The inhabitants of the county in their petition, called themselves *commonalty*:—but do not describe the tinnors by that name:—yet they are said to be incorporated.

Launce-
ston.

This king, in favour of his son Edward,‡ appears to have granted, with the consent of Parliament, a general charter, giving privileges to *Launceston*—the honour of Trematon—the castle and manor of the town of Saltash—the castle, borough and manor of Tyntagil—Penryn—Liskeard—and the town of Lostwithiel—as ports of the duchy of Cornwall; with the prises and customs of wines in that county: and all the profits of his ports within the same county; with wreck, whale, sturgeon, and all other fish; also the stannary, and return of writs; and that no sheriffs should intromit to do execution of writs there.

Duchy of
Lancaster.

This king also granted, with the assent of Parliament, to his son, that he might have a chancery,§ and writs and justices, as well for pleas of the crown as other pleas, and all other liberties and royal rights belonging to a *county palatine*, as the *Earl of Chester* has.

Besides these charters, there were in this reign many confirmations.

* Edw. the Black Prince.

‡ 2 Bro. Will. App. 537.

† Pearce, p. 64.

§ Plow. 214.

One for the men of the town of *Andover*,* and their successors, of the charter of Henry III. Edw. III.
1355.

Another to the *Abbey of Tavistock*,† of the jurisdiction of that hundred, with a market and fair. Tavistock.
1346.

Another to *Dunwich*.‡ 1218.

To *Rochester* a confirmation of the charter of Edward II. 1334.

And *Ipswich*, one of a previous charter of this reign.§ 1339.

To *Portsmouth*, confirmations of the charters of Richard I., John, Henry III., and Edward II.; and which were repeated by Richard II. and Henry VI.|| 1359.

Madox¶ quotes many instances in this reign, of places which have never been incorporated, but which were charged to the king in the same manner as cities and boroughs.

PARLIAMENT ROLLS.

We find also in this reign, in the *Parliament Rolls*, some passages worthy of observation.

Thus there is a petition, the recital and contents of which may serve to illustrate more distinctly than has been done before, the nature of the hue and cry, and the mode in which it should be levied, as one of the effectual means of police at that period; and the distinction between the towns and the body of the county, which we have so frequently marked, is again denoted in this document. Hue & Cry.

In consequence of the law being set at defiance by various large bodies of evil-minded persons, and by the commission of murders, felonies, &c., it was commanded, "That in each county of England, some of the great men of the same county should be assigned keepers of the same, by the king's commission, and that the keepers of the peace hitherto assigned, and the sheriff and all *men* of the county, when assigned for that purpose, should attend the great men to keep the peace, as if the king himself were present; and the said great men should compel the attendance of four men and the provost of each town, and array the men of

* Rot. Cart. n. 6. 1 Pet. MS. 45.

† Rot. Cart. 3 Edw. III., n. 45.

‡ Rot. Cart. 32 Edw. III. n. 4.

† Bro. Will. vol. ii. 347.

§ Rot. Cart. 12 Edw. III., n. 17.

¶ Mad. Fir. Bur. p. 65.

Edw III. "the same town, so that if persons armed, or suspected of
 "evil; pass through the same towns, in companies or other-
 "wise, that the men of the town should cause the *Hue and*
 "*Cry* to be raised, and pursue them from town to town,
 "from hundred to hundred, and from county to county,
 "arrest and safely keep them, and certify the fact to the
 "said great men; and if it should happen that the men of
 "the town cannot arrest such passing, that then they should
 "certify where they are to be found; and the great men
 "should assemble the power of the county, and pursue them
 "from county to county, until they be taken."

1343. The commons complain, that the grantees of court leet are in the habit of levying excessive fines, under the name of chattels forfeited, which the king orders to be amended.*

It was also enacted, that merchants alien, who were *residing* and *conversant* in the kingdom, taking the profits as merchants denizen, ought to aid and bear charge with others of the kingdom, for the time that they resided.†

1351. Again it was ordained, that notwithstanding adjournment in Eyre by *writ de libertate probanda*, the lords should be

Villainage allowed to allege exception of *villainage* against their villains in all writs. And that they might seize the bodies of their villains, as well as they could before such writs de libertate probanda were brought.‡—From which it appears, that villainage, and the opposite distinction of freemen, were at that time in full operation. And the succeeding documents establish the same fact.

1347. It is asserted by the council in Parliament, that the exception of *neifty* against the plaintiffs, if it be by the defendant before the justices, and he alleges that the plaintiffs are his neifs, and born in another county—shall be received and allowed; and if the plaintiffs answer that they are *free* and of *free estate*, and offer to prove it, that then, without any further proceeding in the business, the justices should adjourn the parties before the king, or in the common bench, at the election of the defendant.§

* Pet. Parl. 17 Edw. III., n. 15, p. 141. † Pet. Parl. 17 Edw. III., p. 137.

‡ Rot. Parl. 25 Edw. III. n. 38, p. 242. § Pet. Parl. 21 Edw. III., n. 21, p. 180.

It was likewise declared, that a lord might allege *villainage* against his *neifs* by way of exception, and if the plaintiffs answer that they are *free*, and of *free estate*, the justices shall adjourn the parties before the king, or in either of the benches, at the election of the defendant. And the inquest shall be taken by *men* of the visne of the county where the plaintiffs were born. Edw. III. Villainage

That a writ should not be abated by exception of villainage, if the defendant or plaintiff against whom it is alleged, was *free* when the writ was purchased.* 1363.

In exception of villainage alleged by plaintiff, as regarding to the manor where the defendant and his ancestors have been *neifs*, and residing all the time there, the visne was to be prayed where the manor is laid.† 1371.

The lords and the commons of the land complain, that their villains come to London, and there issue writs of debt, and other contracts against them, to be *free*; which city has no knowledge of villainage, nor in what place the attain lies.‡ 1373.

The king refused to change the common law in this respect.

The men of *Chepyng Toriton*, in the county of Devon, were exonerated from sending members to Parliament, never having sent any before the 21st of Edward III.—and then it was occasioned, as stated, by the sheriff maliciously returning that it was a borough town.§ Toriton. 1366.

The exemption from suit at the tourn and leets, of women and clerks, which we have before noted, is upon the Parliament Rolls expressly declared, thus:—

Before this time, no man was accustomed to come to wapentakes, or hundreds, to present, unless *resiants*;|| that women, clerks, and men of religion, have been excused from coming to such wapentakes and hundreds—nevertheless, the bailiffs have grievously amerced them, to the great distress of the non-resiants, of women, clerks, and men of religion—and likewise of poor men, who have only 1376. Resiants.

* Pet. Parl. 37 Edw. III. m. 4, p. 279. † Pet. Parl. 45 Edw. III. m. 4, p. 307.

‡ Pet. Parl. 47 Edw. III. n. 15, p. 319. § Rot. Pat. p. 1, m. 21.

|| Pet. Parl. 50 Edw. III. n. 138, p. 357.

Edw. III. one or two acres of land, and who are not resiant upon it, and who in consequence leave their lands untilld.

We also see here a distinct statement, that the poorer persons, who could not fully bear the public burdens, were not liable to do this suit.

London. The mayor, aldermen, and commons of the city of *London*, complain, that their franchises have been infringed.* That every stranger can dwell in this city, and keep a shop—be a broker, and buy and sell merchandise by retail—and one stranger sell to another stranger for resale;—and make their residence for 40 days, by which the secrets of the land are discovered to enemies, and spies received within their shops.†

The king grants, that under condition they put their city under good government, their grievances should be redressed.

South-
ampton.
1376.

The commons and tenants of the town of *Southampton*, pray the king to take the farm thereof into his own hands—the expenses of the fortifications being so great, that the majority of the commoners and tenants had departed therefrom.‡

Cinque
Ports.

The men of the county of *Sussex*—that is, the poor men of the hundred of *Gostelyng*,§ complain that the poor people bear all manner of charges belonging to the said hundreds—the men of the Cinque Ports having purchased half of the said hundred, and not paying anything to the hundreds towards their franchises, by which they are seriously impoverished.

Frank-
pledge.

Item—From ancient times, it has been the custom, that the presenters ought to present the articles of the leet and view of frank-pledge only twice a year, at Michaelmas and Easter. The bailiffs now compel the poor people and the husbandmen, who ought to attend their labours, to come every three weeks, to their wapentakes and hundreds, by colour of presentments, &c., otherwise they are fined grievously.||

Calais.

The burgesses of *Calais*, amongst other things, petition

* See before, 1290, 18 Edw. I.

† Pet. Parl. 50 Edw. III. n. 84, p. 347.

‡ Pet. Parl. 50 Edw. III. n. 78, p. 346.

§ Pet. Parl. 50 Edw. III. n. 112, p. 352.

|| Pet. Parl. 50 Edw. III. m. 30, p. 357.

that every *burgess* be capable of inheriting in the town, Edw. III. within a year and a day after his oath be taken, upon pain of losing his franchise, for the profit of the king and reparation of the town. And that no *stranger* be a burgess within their town, except for the salvation of it.*

As to the second point, the king wills that it should be so:—saving to himself and his heirs, that he might by favour make a stranger merchant a burgess.

But this reservation must still be taken as only giving the king the power of making such a person a burgess, provided *he resided* at Calais; for it is clear, that all these regulations were made for that town after the king had expelled the French from it, and had fixed the English there, and was desirous of increasing the number of British *inhabitants*.

The following extract includes the doctrine of prescription, as applicable to cities and boroughs;—

The commons pray, that no lord nor other man, nor cities Prescription. nor boroughs that have franchises, should be compelled to answer for those to which they claim title by prescription, if anciently used; and that when they were so held, and claimed, it should be answered in *quo warranto*.† And it was affirmed, by this present Parliament, to be a sufficient title, that they and their ancestors, and those whose estate they have, used such franchises from time immemorial. As well with respect to franchises of cities and boroughs as other lordships—so that they can use and enjoy all their franchises and usages, granted and confirmed by the king and his progenitors, as used by title of prescription, notwithstanding any statute made to the contrary. And that title of prescription be limited for certainty—that is to say, from the coronation of Edward I.

The poor commons of cities and boroughs petition that Hamlets. hamlets not enfranchised, adjoining to cities and boroughs, may contribute to all charges within their walled towns; and that the mayors, &c. may commit all breakers of the peace there.‡

* Pet. Parl. 50 Edw. III. m. 32, p. 368.

† Pet. Parl. 51 Edw. III. n. 12, p. 366. ‡ Pet. Parl. 50 Edw. III. n. 106, p. 351.

Edw. III. A proper precedent for extending the jurisdiction of cities and boroughs, to those places in their immediate neighbourhood, which form locally a part of their natural limits.*

The commons pray, that the wages of knights of the shire may be levied of the whole county, &c., with the exception only of cities and boroughs, &c.—those who go to Parliament by writ—and bond-tenants.

Here the separation of the cities and boroughs from the counties, as to the payment of the wages of members of Parliament, is most distinctly mentioned; as well as the exemption of bond-tenants from the payment.

NONÆ ROLLS.

1340. By the statutes, 14th and 15th of Edward III.,† the ninth part of all the goods and chattels in cities and boroughs was granted by Parliament to the king.

And it was declared, “that merchants foreign, which *dwell* not in the cities nor boroughs—and also other people, that *dwell* in forests and wastes—and all other that live not of their gain nor store—by the good advice of them which shall be deputed taxors, shall be set lawfully at their value to the fifteens, without being unreasonably charged. And it is not the intent of the king, nor of other great men, nor the commons, that by this grant made to the king, of fifteens, the poor boraile people, nor other that live of their bodily *travaile*, shall be comprised within the tax of the said fifteens—but shall be discharged, by the advice of them which be deputed taxors, and of the great men which be deputed surveyors.”

In these provisions, we see that the people in the county are charged with the *fifteenth*, whilst the cities and boroughs, in respect of their peculiar privileges, are charged a *ninth*; but the statute declares, that persons in the inferior walks of life were not to be charged with these payments—as we have seen before, that they were quit from other burdens.

The ninths were directed to be collected according to the

* Pet. Parl. 51 Edw. III. n. 28, p. 368.

† Nonarum Inquisitiones, in Curia Scaccarii, Temp. Reg. Edw. III. in preface.

valuation of Pope Nicholas, in the 20th of Edward I., and Edw. III. from the laity only, not from the religious; except from those who held by barony, and were returned to Parliament when the grant was made; and except possessions acquired by the religious after the 20th of Edward I.—which otherwise would have wholly escaped the charge, not being included in Pope Nicholas's taxation, which was used as the guide till the time of Henry VIII.

In this document, the distinction between the laity and clergy, is again apparent; the latter being only liable to be charged in respect of their lay fees.

With respect to these rolls it is observable, that the commissioners return the ninth of the goods of the *burgesses* generally, without any other description—which no doubt included all the inhabitants, who were, according to the documents we have lately seen, liable to these burdens.

In the return for the boroughs in the county of *Dorset*, only the names of particular individuals, who must however have been the burgesses, are entered, the sums charged upon them being affixed to their names. In *Lyme*, there were 30 persons named — *Dorchester*, 42—*Melcombe*, 22 — *Shaftesbury*, 91.

In the charge of the fifteenth, the merchants are described as living (*morantes*) without the cities and boroughs; and other persons as living (*manentes*) in retired places.

In the county of *Hereford*, in the return of the ninth for *Hereford*, 86 persons are named—*Leominster*, 32—*Weobly*, 17.

In the county of *Cambridge*, the return for the borough is made according to the different wards, including 428 persons.

The fifteenth is charged upon 198 inhabitants of the county of *Lincoln*,—*Lincoln*, 558—*Grimesby*, 65—*Torkesoy*, 41.

Nottingham, 204.

In the county of *Sussex*, there is a list of individuals, without any description, but who appear by the writ that precedes it, to have been the barons of the *Cinque Ports*.

The charge of the ninth upon the *burgesses* of *Huntingdon*, is imposed upon 135 persons, as it is said, by the assent of the *men* of the borough; and that of *Scarborough*, in *Yorkshire*,

Edw. III. is charged upon the goods of the *burgesses* and merchants, including 105 names.

In addition to these extracts from the parliamentary and nonæ rolls, we have a few *miscellaneous records*, which it may be material to quote.

In the documents of the reign of King John and Edward I. relative to Ipswich, we have seen grants of the liberty to buy and sell, given to particular individuals, chiefly noblemen and their men and villains, for some valuable consideration paid to the *burgesses*—as, the rent of particular premises—contribution to scot and lot—and other payments—being in fact, a substitution for the tolls which would otherwise have been payable by those persons as *strangers*. We have another instance of the same kind, with respect to Ludlow, in the following singular document:

Ludlow. “I, Jordan of Ludford, having granted to the Lord Walter de Lacy, and to all the *burgesses* and *men* of *Ludlow*, common of pasture upon Whitcliffe, to wit, as the dingle takes its course from the *town of Ludford*, into the woods, as far as my estate continues in wood and plain; so that all that land shall be common to them in pasture, between the said now dingle, and the water of Tamete. Also I have granted to them, free ingress and egress through the same pasture, as far as the land of others, wheresoever they please. To hold to them and their *heirs*, freely and quietly, in the manner their ancestors freely held the same. And for this grant and pasture, Walter de Lacy, and the *burgesses* of Ludlow, have granted to me and my *heirs*, and to all my men of my household, freely to buy and sell in the town of Ludlow, in fairs, and without any custom to be given or made. Also they have given to me, 100s. for confirming the same gift. And I, Jordan, and my *heirs*, the aforesaid gift to them and their *heirs*, against all men will warrant.”

Derby. 1430. In the 4th year of this reign, the *burgesses* of *Derby* were summoned to answer by what warrant they claimed to have toll;* and the privileges that none should buy cloth within ten leagues of Derby, except in the same borough, saving

* Plac. quo warranto, apud Derby, R. 21.

the liberties of *Nottingham*; and that they should be toll free, throughout the king's dominions; that they should choose a bailiff every year; and have a fair on Thursday and Friday in Whitsun week, and another of 17 days, viz., eight days before the festival of St. James, and on the festival, and on the eight succeeding days; that they should have a coroner, and markets; *and that none be impleaded out of the borough.* For the privilege of toll, they produced the charter of King Edward III., dated the 3rd of June, in the 1st year of his reign. Whereupon the king, on their paying a fine of 40 marks, restored them their liberties, which he had questioned and seized; it appearing to him, that they and their ancestors, time out of mind, enjoyed them, and held the said borough—paying yearly a quit rent of 46*l.* 16*s.*

Edw. III.

Bailiff.

Coroner.

Market.

1327.

The king reciting, in a record of this date,* that the *good men and commonalty of Torrington*, Devon, had, through the malicious return of the sheriff, sent two burgesses to Parliament, from the 21st year of his reign, and that in consequence of such a burden, they had been greatly impoverished—granted, that for the future, they should be exempted from returning any burgesses to Parliament.

Torrington
Devon.
1368.

Dr. Willis justly observes, that many of the suggestions in this petition are not founded in fact; and he adds with truth, that it was common, in documents of that period, to allege such falsehoods, when it suited the purpose of the parties.†

The same author also adds, that our historians build too peremptorily on general words in records; and he instances his late learned countryman, Dr. Hody, who, from a clause in a charter, asserted, that Barnstaple sent to Parliament, even in King Athelstan's time; and also from another passage, likewise insinuates, that every market town formerly did the same. As we have demonstratively shown, that there was not at so early a period, any return of members for boroughs, it is not only clear, that Hody's inference is unfounded, but we may also know how to appreciate assertions of a similar description, so common in our books of law and constitutional history.

Barnstaple.

* Rot. Pat. 42 Edward III., p. 1, n. 8.

† 2 Willis, 244.

Edw. III. Having now quoted a variety of charters and other documents relative to the different boroughs, which convincingly establish—that all their privileges were in effect the same—that there was no distinction between them with respect to burgage tenure—that none of them were incorporated—and that the burgesses in all were the *free inhabitants, sworn and enrolled at the Court Leet*—we shall proceed to extract some of the principal cases from the Year Books, which will equally tend to illustrate our present researches.

SECOND YEAR BOOK.

The second Year Book, first published in 1596, 39th of Elizabeth—contains the following entries:—

South-
ampton.
1328.
Fol. 39 B.

The mayor, bailiffs, and the other *men* of the *commonalty* of the town of *Southampton*, are alleged to hold the port and town of the king at fee-farm, rendering 220*l.* in the Exchequer; and that they had of right all the custom and toll of the town and port of *Lymington*, which was within the precinct of the port.

In this case there is no mention of any corporation at Southampton; and from the charters which had been before this time granted to that place, it is clear that it was not incorporated.

Richmond
1329.
Fol. 48 B.

A writ was directed to the bailiff of *Richmond*, where the abbot of Notre Dame of York had the *return of writs* by his bailiff, and of all writs brought against him or his tenants, or the men of their tenants within his franchise; for which he showed the charter of the king:—and it was questioned whether the justices could try the franchise of the abbey, as in a quo warranto.

No corporation is spoken of at Richmond at this time; and from the then state of that place it is clear there could have been none: being then in the possession of the abbey of Notre Dame at York.

Villain.
Fol. 77 B.

It was pleaded to a count, that the plaintiff was *the villain* of the defendant; and that the defendant was so seised of him. It was said that the issue was to try the neifty, which

is spoken of as contradistinguished from a freeman; and it Edw. III. was objected to the villain, that he was not enfranchised.

Here we find villains and freemen spoken of as in the Freeman. Saxon and other laws; the incapacities and rights of the one and the other, being apparently the same as in those earlier times.

A charter was pleaded which witnesses, that the king had granted to the *burgesses* and others, keepers of *Kingston-upon-Hull*, that they should not plead without it; a writ appears also to have been directed to the bailiff, and the rights of the liberty seem to have been conceded. Kingston-upon-Hull. 1330. Fol. 121.

But there is no mention of a corporation, and it will be seen hereafter, that this place had none till the 18th year of Henry VI., when it obtained a *charter of incorporation*—being the *first granted to any municipal body*.

It appears from many passages in the Year Books, that the abbots and priors, and other such ecclesiastical persons, were "*elected*" from their own bodies:—from which the use of that term, with respect to corporate officers, in subsequent times, was in all probability derived.

In an action in the Exchequer for a messuage in the suburbs of Bristol, as an escheat upon commission of felony, Bristol. 1334. Fol. 283 B. for which the tenant had abjured the realm, the bailiff of Bristol demanded consuance of the plea, and showed a charter, granting to the mayor and bailiffs consuance of all manner of pleas.

This charter, giving the jurisdiction, appears, as here stated, to have been granted only to the king's officers in the place, namely, the mayor and bailiffs—at all events no corporation is mentioned.

There is a writ to the Bishop of Salisbury concerning the Fol. 317 B. bailiwick of the bedellery of the hundred of Cademunster; of which the plaintiff counted that his ancestor was seised in his demesne as of fee, and took the esplees, to wit, for every time that there was a livery in the hundred of lands and tenements, recovered by writ, 2s.; and for every brewing of ale for sale, 1d.; and *for every man who entered into a dozein*, 1d., and Dozein. other sort of issues of the bailiwick. *Hill* contended, that every

Edw. III. *præcipe quod reddat* ought to be brought in a vill, and this is
Vill. not so brought—and therefore there should be judgment of the writ, &c. *Trew.*—The reason why a *præcipe quod reddat* should be brought in a vill is for certainty from what visne the jury should come, &c.; and also that it may be ascertained by the
Hundreds. hundred, &c. And a man shall have a writ to demand a manor without saying in what vill. *Stouff.*—The hundred is not in vills, nor are the vills in the hundred; and a man may have a writ to demand the hundred without mentioning the vill, &c. *Gayn.*—It may be that a part of a hundred is in no vill. *Schard.*—If assise of novel disseisin were brought of this bailiwick, he agrees that it should be brought in a vill, &c.; and I understand that a *præcipe quod reddat* of a bailiwick was not given until after the writ of novel disseisin was given for that purpose by the statute; wherefore it appears, that at the common law it should be brought in a vill; as should also the other. *Stouff.*—The *præcipe quod reddat* is given at the common law, and not by statute, wherefore the one writ cannot be taken as an example for the other, &c. *Schard.*—I know that, when there are two hundreds in one vill. *Stouff.*—That proves that a hundred cannot be demanded in a town, &c.

In this entry, the jurisdiction of the tourn or leet in hundreds and vills, as to the assise of beer, and the entering into dozeins, mentioned in the last reign in the Mirror, is expressly recognized; and the doctrine of hundreds and vills, according to the common law, fully considered.

MANUSCRIPT YEAR BOOK.

The second Year Book terminates in the 10th year of the reign of King Edward III., from whence to the 17th, when the third Year Book commences, there is a chasm in the printed volumes, which is supplied by a valuable manuscript, in the possession of the Honourable the Masters of the Bench of the Inner Temple, and from which we have been permitted to make the following extracts.*

* The public are likely to be further indebted to the learning and industry of Mr. Manning, for a translation of this important volume.

An assise was brought against an infant within age, Edw. III.
 who pleaded in bar a release made to his father; and
 the complainant denied such deed; the date of which was
 at Ewerwick: whereupon a writ issued to the sheriff,
 to make the witnesses come, and the inquest from the
 neighbourhood where the tenements were. *Parn.*—This
 was made in the city of Ewerwick, so that the deed cannot
 be tried by any others than by *men* of that city; and this in- Men of the
City.
 quest is of *strangers*,* who cannot know of any thing that is Strangers.
 done in the city; wherefore you cannot by these take this
 inquest, &c. *Trac.*—The court has awarded an inquest of
strangers, because the tenements are in gildable, wherefore Gildable.
 it ought to maintain and continue this award. And in the
 case where a deed is denied, it can be tried by the most
foreign and most distant who are of the county of the place Foreigners.
 where the deed was made: and it was said, If I bring my
 writ against the mayor and *commonalty* for a thing done Common-
alty.
 within the city, it shall be tried by *foreigners*. *Ald.*—But if
 an attain was brought after on this inquest, the 24 would
 be *men of the city*; and for the same reason those on this
 inquest should be of the city. *Trac.*—Equally well may the
 24 be of *strangers*; and although it be found, that this is not
 the deed of the plaintiff, still it is proper to take the assise
 by men of the neighbourhood where the tenements are.

The Bishop of Ely sued to the king by bill, because the
 king had granted to his predecessor by charter, the *return of
 the writs* in a certain franchise; and afterwards by charter he
 had granted to the Abbot of R. to have *return of the writs*
 in the same franchise; wherefore the bishop prayed remedy.
 The king commanded the chancellor that he should cause
 the parties to come, and that he should see their charters;
 and that if there was any thing in the latter to the damage
 of the former, the charter should be to that point repealed;
 whereupon a *scire facias* issued, and the parties came. *Parn-*
ing challenged the writ, for that it issued out of no record.
 Notwithstanding this, the writ was adjudged good. In this
 case the principle is distinctly recognized, that subsequent

Scire
Facias.

* See same case, post. Lib. Ass. fol. 26, 1336, 10 Edw. III.

Edw. III. charters of the crown, giving the same privileges which had been before granted, or interfering with prior grants, are void, and the mode of repealing such charters, by *scire facias*, adopted.

Villain. A case occurs in which the claims of a *villain*, as contradistinguished from those of a *freeman*, are mentioned.

Leet. The Prior of P. avows that he has a *leet* to be holden on

Resiants. a certain day, at which day all the *free resiants* and others ought to come; and his bailiff shall elect 12 *freemen* to present

Jury. things presentable, and shall deliver their names to the steward, and shall make them swear, and deliver to them

Articles. the *articles*, &c.; and he alleges a prescription for this, and says, that the plaintiff, who is a freeman, was chosen amongst others, and would not take the oath, wherefore he was amerced.

Here we have a distinct recognition of the *leet*—the *free resiants*, as the suitors there;—the *freemen*, who are to be sworn upon the *jury*—and the *steward*, presiding in the court.

Considering the entries we have seen in the immediately preceding folios, in which the freemen and villains are particularly spoken of as contradistinguished from each other, it is impossible to suppose that the *freemen* here mentioned, meant any portion of a *body corporate*, or any other class, but the "*liberi homines*" of the common law.

Wells.
1342. The king by his charter, granted to the *burgesses* of *Wells*, the privilege that they might choose a mayor of themselves; and that they might have cognizance of pleas within the borough; with several other franchises. And afterwards, at the suit of the king, *scire facias* issued against the burgesses of Wells, that they should be before the king in his chancery, to show wherefore the said charter, granted to the damage of the king, and of the people of the same county, as appears by evidences shown to the king and his council, and which charter was granted in deceit of the king's court, should not be repealed. The burgesses by attorney came, and the return of the sheriff was first challenged, &c.: and the damages done to the king were assigned, that, whereas the king, in the time of the voidance of the Bishoprick of Bath

and Wells, used to be seised of the issues of the perquisites of the court of Wells of 24*l.*, which was decreased to the king by means of this grant, forasmuch as the burgesses have cognizance, and also have issues, fines, amercements, and ransoms, which would be to the king if the grant was not; and the same thing departs from the bishop, when the see is full; and other damages.

R. Thorpe.—The charter, by which the franchises are granted, was of record; and we do not understand that you have warrant to repeal this charter, which issues from the will and commandment of the king; for no man can do this without commission from the king, or otherwise in Parliament.

Parning.—This suit is taken for the king, and the king shall not sue in Parliament by petition, nor shall he sue in Parliament concerning a matter which touches him; and if we can make a commission to another to try this matter touching the king, *à fortiori* we ourselves can try it.

Thorpe.—In the case that was between Little Gernemuth and Great Gernemuth, the suit was had in Parliament to reverse the grant and the charter of the king.

Parning.—That was between party and party, and was sued by petition in Parliament, and adjourned into the King's Bench; but the king shall sue in his own court when it pleases him. We adjudge the writ good.

R. Thorpe.—We tell you, the burgesses have a *mayor*, who has possession of the franchise as well as them; and who is their sovereign, in whose mouth it lies to save the franchise; but he is not named in this writ.—Judgment of the writ.

W. Thorpe.—The franchise was granted to the *burgesses* alone; and although they have appointed a *mayor* by force of the charter, which we are by this suit to repeal, and to prove that they ought not to have a mayor, it is not by law necessary that any others should be named except those to whom the grant was made.

R. Thorpe.—Shall not *quo warranto* be brought of the franchise against "the mayor and burgesses?"

W. Thorpe.—This writ is taken upon a claim, and must be accordant with the claim.

Edw. III. *R. Thorpe.*—If a woman, who purchases a freehold, be afterwards covert, and a suit were to be made against the feme, it is necessary to name the baron.

Parning.—This is not similar; for, if he brought now a writ against “the mayor and burgesses,” the suit would confirm that there should be a mayor, where there ought to be none. And no one shall be party except those to whom the grant was made; and no grant is made to the *mayor*; wherefore he shall not be named.

R. Thorpe.—The king is not apprised of the cause upon which he founds this suit; namely, of his damage, and that of the people; either by suit of a party or by indictment:—wherefore we do not understand that the king will choose to be taken as a party.

Parning.—You have been told, that it is by record of the Exchequer, which shall be brought, if you will deny that the king is apprised.

R. Thorpe.—As to this, the king has granted to the burgesses the *power to choose a mayor and coroners*, and *cognizance of pleas*, and *to inclose the town*; and this matter lies solely in the will of the king, and his grace; and the profit is casual, and not annual. And as to the other point, that he has granted us to be quit of tonnage, murage, pickage, portage, stallage, &c., we and our ancestors and predecessors, *burgesses of Wells*, have had it from time whereof memory is not. So that this grant is not to the damage of the king, nor any other. And as to this, that the king has granted to us to have a gaol, and the keeping thereof, this is only for the keeping of the peace; and rather a charge than a profit.

W. Thorpe.—As to the first point, the king is injured, if you have cognizance of pleas which belong to the bishop, as the king is assured by record, and of which the king during time of vacancy has been seised of the amercements and issues. And also, if you came not out of the town before the justices of the king, as the charter wills, the king would lose the issues. As to the other point, of acquittance from tonnage, murage, &c. you say, that you were quit before this grant, and this was perhaps because you did not perform

them; and non-feazance does not acquit a man, unless he Edw. III. were acquitted by title of right, quia in negatis non est usus. As to the third point, that the keeping of the gaol is not profitable, but onerous; this is not so:—for it is found by record in the Exchequer, that by keeping of the gaol of this county, the king receives by the year 24l.; and if you had the keeping thereof in this town, so much would decrease from the farm. And you claim these things by bargain and fine, in which case, *if the king be deceived in his bargain and covenant, by law he may repeal it.* Judgment for the king. And we pray that the franchise may be resealed, and the charter repealed.

Parning ad idem.—The king cannot grant a franchise to any other tenants but his own, or of some one under him; and you are the tenants of the bishop.

Adjournatur. And at another day the reasons were rehearsed.

Parning.—*If you are tenants of another, the king ought not to grant to you a franchise in prejudice of your lord; and thus the charter is void, viz. when it is to his damage, of which he was not apprised. And if you are the tenants of the king, we know that which you pay to him; and if you have paid nothing, we will cause it to be paid. And you shall answer of the time passed, that you have been approvers of the king, since you show nothing from the king that you should hold suit. And you use the charter of the King John, by which he constitutes you burgesses, which can be only understood, these burgesses.*

Afterwards, by award in Hilary Term, in the 17th year, the charter was repealed.

Here the doctrine is distinctly recognized, which we find pervading most of our early law authorities, that if the king be deceived in his grant, it is void.

The abbot of *Westminster* brought a writ of trespass against *Husculf de Whitewell* and *R. de P.* and other of them, that he and the others had disturbed his bailiffs in holding *view of frank-pledge* at *Musham*, which view he had by grant from the progenitors, and confirmation of the present king. *Gayn.*— 1342.

Edw. III. Show that which you have by the grant and confirmation.

Hillary.—He shall not, either to you or the court, unless it were in quo warranto. *Gayn.*—Then we say with regard to the coming with force and arms, not guilty, and that John de Idle has view in Musham; to be held on the same day that you have counted; without this, that any other has view in this town:—and this view John has as *appendant to his manor* of Musham,—and this he and the tenants of the manor have had since time of memory; and we tell you for R., that he came as *steward* of John at the same day, to hold the view of his lord, and the abbot by his ministers would have disturbed him, and he would not permit him. And insisted that he might hold the view of his lord, without doing any thing contrary to the peace; and Husculf is chief steward, and made R. when he held the view; and the others are ministers who did execution by command of R. the steward. *Thorpe.*—First he took his plea in traverse of the cause of our plaint; and also how it was by way of ratification: and afterwards in his conclusion he descends to say that he has done nothing contrary to the peace, which traverses the disturbance, without denying that we have leet. Thus his answer is contradictory, and we pray judgment and our damages. *Black.*—If we say the truth, we did nothing contrary to the peace. *Hillary.*—We must know whether you will justify the fact or not. *Gayn.*—We tell you as above, without this, that the abbot has been there as he supposes, by his plaint. *Deren.*—You shall not be received to say that the abbot has not view; for in the eyre of Essex, in the time of the grandfather of the present king, the abbot was summoned to answer by what warrant he claimed the view, &c. in Musham, of which we tell you that the abbot is lord. At which time, the predecessor of this abbot came and claimed view by grant of the King Henry, and the action was there allowed; and then one W., whose estate John has, was of full age, and claimed nothing in the view. Therefore judgment, if you shall be received;—and he showed the record and confirmation of the charter. *Gayn.*—Their plea is double, one, that they claim view by the king's charter; another, that by the non-claimer of him, whose estate we have, in the eyre, the

view which we claim was lost. *Schardeburgh*.—It is not; for Edw. III. all is one answer, and upon record. And then *Deren* for the plaintiff said, that the king granted to his predecessor, view, &c., and afterwards in eyre ut supra, this was adjudged to him;—thus he has view. *Gayn*.—We will imparl. *Thorpe*.—You shall not, for we maintain our writ against the averment by which you have traversed it, namely, that we have not view. *Stouff*.—We have said that there is but one view; which we and those whose estate we have from all time have had; without this, that he has view. And he does not maintain that there are two views, nor that he has used the view:—whereas, although the king granted to him view, if he has not used it, that does not give him view; wherefore the issue is not good. *Hillary*.—If he has not used the view he can claim nothing, but he does not answer to your view by your answer to him. Wherefore this shall make issue, whether he has view or not.

In this case the rule, so necessary to the proper understanding the correct doctrine relative to the exclusive jurisdiction of boroughs by means of their court leet, is fully established:—for it clearly appears there could not be two leets in the same place; and therefore wherever a borough had a leet, no other lord could interfere with them, nor could the sheriff hold his tourn there. The jurisdiction of that officer was therefore excluded from the borough, as we have seen expressly mentioned in several of the charters.

THIRD YEAR BOOK.

In a suit brought by the Abbot of Forneaux, the *tourn* of 1343.
the sheriff is mentioned,—and also the county court. Fol. 56 B.

A claim of villainage occurs. 1350.

And a claim of neifty, with a writ de libertate probanda. Fol. 71 B.

The bailiff and *commonalty* of a town are mentioned:—but 1355.
there is no reference to a corporation. Fol. 40.
1356.
Fol. 15 B.

The villains of the Abbot of St. Alban's are mentioned, 1364.
and in folio 34, are contradistinguished from freemen. Fol. 33 B.
Fol. 34.

And the same occurs as to the villains of a prior, contradistinguished from the tenants in ancient demesne. 1365.
Fol. 6.

Edw. III. It is worthy of observation, that in this volume, although it
 Corpora- contains cases from the 17th, to the end of the 39th of
 tions. Edward III., being a period of 22 years, and numerous arguments occur with respect to many cities and boroughs, and aggregate bodies, there is not throughout the whole, nor in the index, any mention whatever of any corporation, or of any corporate powers :—a thing almost impossible, if municipal corporations by prescription, existed at that period.

There is a chasm in this volume from the 30th of Edward III., to the 38th. The intervening years, however, are quoted
 Statham. by Baron Statham in his Abridgment, first published in 1467, 7th Edward IV. : but there is not amongst the titles of that compilation, any of “corporations ;” nor any reference to that head of the law : which therefore, it is clear, was not known either at the time when that work was written or published.

FOURTH YEAR BOOK.

The succeeding volume of this valuable collection of law cases, commences in the same manner as the preceding, and contains matter resembling the former, entered in the same manner, with similar notes of the contents in the margin.

1366.
Fol. 11.
Newcastle. In this year, a case occurs respecting a claim of cognizance
 by the mayor and bailiffs of Newcastle.

Fol. 17 B. We have before fully shown the numerous succeeding grants by which the chancellor and University of Oxford obtained their jurisdiction within the borough ; we have here an instance of a prohibition, suggesting that the applicant was impleaded respecting a house, before the chancellor of Oxford ; and it was said that the clerks of Oxford had a privilege that they should have the accustomed hostels, before any secular persons ; and that the messuage belonged to the Prior of W., who had leased it ; and a clerk went to the house, and gave sureties for the rent, and he was not allowed to have the house :—and he, before the chancellor, pleaded this privilege, and that he was a clerk *residing* within the town, and had been so for *one year*.

Fol. 26 B. John Charnells avowed the taking of certain cattle, by reason that at the *view of frank-pledge* in his manor, it was

presented by the *chief pledges*, that John de T., permitted Edw. III. one William his servant to reside with him more than *a year and a day*, and he was not put in the *dozein*; for which J. de T. was amerced.

In the course of the argument, it was admitted that the chief pledges were the judges; and that if presentment was not made in the *view of the lord*, it should be done in the *tourn* of the *sheriff*: and if default was made there, it should be presented in the King's Bench, &c.

The ancient law of the *frank-pledge and leet*—the system of *pledges* and *dozeins* as required by the Saxon laws;—their connection with residence;—and the liability of the host for his inmate—are all here fully recognized:—as well as the resulting obligation of the sheriff of the county to enforce those duties, when the king's officer in the particular franchise refused or neglected to do it; and the exclusive system of boroughs, founded on the ancient common law as to freemen and their suit royal at the court leet, appears also to have been acted upon to this time.

Villainage and free men are mentioned.

Trespass is brought against two; the one says, the plaintiff is his *villain*, and that he was seized of him as his villain, regardant of the manor of G., holding certain lands in villainage of that manor, and that he would not do the services which he ought to do, but fled, and he pursued him, and took him as his villain. In the course of the argument of this case, the leaning of the law in favour of freedom, is asserted;—freedom by stock is mentioned;—as well as a *free man born in another county*, and who is described as “adventive” in the place in which he is found; so that *freedom by birth was not confined to cities or boroughs, but extended also by the common law over the whole country*, wherever that law had authority; which is decisive to show that this was the real origin of the doctrine of freedom by birth; and that it originally had no affinity to corporations, nor connection with them.

In a case of this date respecting villainage, it was stated in 1367.
Fol. 8 B.
Fol. 5 B. argument, that *if a villain be once free, he can never again be*

Edw. III. *a villain* ; notwithstanding he is known to hold as a villain in a court of record :—for as he made his services on account of tenure, that will not make his body in slavery ; because in many manors, freemen perform the services as neifs, on account of tenure ; and by reason that it has been the usage to this hour, and we have title of it by prescription, it seems it must be good. *Thorpe*.—It is clearly opposed to law, that the villain ought to make a fine to his lord on account of his marriage, for *his body, and all the goods he has are his lord's*.^{*} *Kirton*.—I grant it is against the common law, that the lord should take a fine from his villain ; still it is a custom in many places ; and it would be supposed by my avowry that he held the land, in respect of which he made such services ; thus it is in the nature of a covenant.

In this case the doctrine is stated, that a person once free would always continue so. It is from the perversion and misapplication of this ancient principle, that in modern times the practice of non-resident freemen of corporations has been supported,—the distinction being overlooked, that although they continued freemen, they were not freemen *of the place* which they had left, but of that where they *resided*.

1370.
Fol. 19.

In trespass, the defendant claimed to be lord of the hundred of L., in which hundred he had waif and estray ; and that a robber had brought certain goods into the hundred, and hue and cry was levied against him, and he waived the goods which came into the possession of the plaintiff, and that such usage† was within the hundred, that if the waif or estray was eloigned, it should be presented by the dozeiners if they came into the possession of any *resiant* within the hundred, so that the lord could distrain the possessor until he made restitution. And upon this, it was presented against the plaintiff that the waifs came into his possession. The steward and suitors of the hundred commanded that the distress should be taken, and this was alleged to be the custom from time of memory, &c. *Belknap*.—He has justified, because he is the lord of the hundred where the injury was done to himself, and *he ought not to be judge himself*, to take the amends of waif : which

^{*} See before p. 610, Mirror.

† Saxon Ll.

do not belong to the hundred: but is a thing for the *leet*; Edw. III.
and belongs to the king; and should be tried by the present-
ment of the dozeiners; and if the lord wishes to take amends
within his hundred of a trespass done to him, it should be
by those who are *resiants* there.

In another case, the defendant avows that at a certain day, ^{1371.}
the *leet* was held at W., and that it was presented by the ^{Fol. 9.}
dozeiners that the plaintiff was *resiant* within the precinct of
the *leet*, and that he did not come; and for this cause, it was
presented and affirmed by the grand inquest, that he was
amerced; and afterwards it was affected by suitors at 6d.;
and for that amercement, he avows the taking, &c.

In an action of trespass by the Prior of Huntingdon against ^{1372.}
the *burgesses of the town*, the charter of King John granted to ^{Fol. 28 B.}
the burgesses was pleaded.*

We have before observed, with respect to the manuscript
Year Book in the Inner Temple, and to the three printed vo-
lumes, as well as the Abridgment of Statham, that "*corpo-
rations*" are not mentioned in either of them, nor in their
indexes or margins.

The observation as to the silence of these records on this
head, applies also to the commencement of this fourth
volume of the Year Books, which was first published in the
42nd of Queen Elizabeth, 1600.

"Corporations" and "capacities," however, occur for the ^{1372.}
first time in the margin of that book; in folio 29 B; ^{Fol. 29 B.}
referring to those titles in Brooke's Abridgment; but in the
text itself, there is no allusion either to corporations or
capacities, excepting that the master of St. Lawrence is men-
tioned, who is the plaintiff against the *commonalty* of Derby:
and no question could have arisen in that case relative to
any corporate right, except as far as related to the master
of St. Lawrence; which would bring the case within the pre-
cedents to which we have before adverted, as to ecclesiastical
bodies.

* Vide ante, p. 414.

Edw. III. The word "corporation," again occurs in the margin,
 1372. with a similar reference to Brooke—in Hilary Term, 45 Ed-
 Fol. 2 B. ward III., folio 2 B, in the following case:—

1371. The Archbishop of York complained against the *mayor* and the *commonalty* of the town of *Hull*, and another person; alleging, that the archbishop and his predecessors had used, from time immemorial, to have, in the water of Hull, in Kingston juxta Hull, all deodands and other profits; and that the defendants had disturbed him in taking them. The party named in the writ, pleaded, in abatement, that he was named with the mayor and the commonalty, where there ought to have been several actions; for the process against them would be several: against him it would be by cape and exigend—and against the mayor and the commonalty, by distress:—upon which the plaintiff demurs. For the mayor and commonalty it was said, that they held the town of Hull of our lord the king at farm, by charter; and they say, that the water is parcel of the town—and that they have always held it as parcel of their charter—and they pray aid of the king. And for the plaintiff it was said, that Kingston is another town, and not parcel of Hull: Thus they pray aid of the king respecting other things, in another town, which does not refer to the action; for Kingston juxta Hull supposes that it was separated from Hull—and therefore it was said, that they should not have aid, but be ousted of it.

But it was ruled, that if assise be brought of tenements in a town, and it is stated, that the demandants held by charter of the king, the tenements in another town, and therefore pray aid of the king, it would be granted, without taking an assise to inquire in what town the tenements were;—so here: and aid was accordingly granted.

The reader will perceive, that in the body of this case there is no reference either to any corporation or to any corporate principle:—and consequently the adoption of that term could only have been borrowed from Brooke's Abridgment, which is referred to; and in which there is the head-

ing of "Corporations and Capacities;" to the 9th and 10th placita of which head, these two notes in the margin refer. The first quotes, under the title of Misnomer, the case respecting the master of St. Lawrence, and which is stated "to be in effect a misnomer." The other case is quoted under the head of Process of Outlawry; for the doctrine, that "process of outlawry by *capias* and *exigend*, does not lie against a corporation, as mayor and commonalty, and such like; but distress." Which doctrine—as applied to the "mayor and commonalty of Hull," is supported by the case—but the original authority does not use the word "corporation," introduced gratuitously by Brooke.

We have already seen, by the instances quoted from Madox, that the doctrine which authorizes the proceeding in this manner against aggregate bodies of counties, hundreds, forests, wapentakes, cities, and boroughs, was fully recognized, notwithstanding they were not incorporated,—and therefore in this case we find the practice referred to generally, and without any particular remark, or any doubt or explanation accompanying it. Indeed it is rather stated as a matter well known and acknowledged, and requiring no illustration.

This could not have been the case, if it had been any new or peculiar doctrine, applicable only, as Brooke quotes it, to corporations; but it was that practical doctrine which necessarily resulted from the recognition of the liability of aggregate bodies, and which we find occurring in the earliest periods of our law. Nor would the reader have supposed this case capable of being applied in this manner, had not Brooke extracted from it this unimportant part of the case, for the purpose of classing it under his head of corporations.

This makes it important to consider, from whence Brooke adopted that doctrine to which he applies these cases.

It should first be observed, that the abridgments which precede him, have no such title.

Nicholas Statham, who was one of the barons of the Exchequer in the reign of Edward IV., cites in his Abridgment.

Edw. III. ment cases from the Year Books till the end of the reign of Henry VI.; and his compilation was published at London by Pynson, in the time of Henry VIII. It has no date or title page. But as it has Pynson's mark, it is supposed to have been printed by William Taileur, at Rouen, who printed Littleton's Tenures for that publisher.

This abridgment contains many cases during the chasms which occur in the Year Books; but it contains no title of corporations, nor any allusion to them.

**Segden's
Abridg-
ment.**

There is in existence an earlier manuscript abridgement, made by one Thomas Segden, Principal of Furnival's Inn, which purports in a fly leaf* at the end of the titles, to have been copied by one Lake, the abridgment being made by Segden himself; but as this has not been published, it may possibly be of little authority, excepting for the purpose of justifying the observation, that there is also in that compilation a similar silence as to corporations.

**Fitzher-
bert's
Abridg-
ment.**

The next abridgment is that of Sir Anthony Fitzherbert, which was also printed by Pynson, in the commencement of the reign of Henry VIII.

This compilation contains the cases to the 21st of Henry VII., and has ever been considered of the greatest authority in the law; embracing much matter not contained in the Year Books or other authorities. And therefore it is clear, that if the doctrine of corporations had been adopted in the law, at the time when this collection was framed, it would have found a place in it; but on the contrary, this work also is totally silent with respect to them, notwithstanding we find all the other heads of the common law to which we have before alluded; as those of franchise—leets—hundreds—sheriff's tourn—and villainage. And in folio 40, under the title of Ayde de Roy, the *mayor and commonalty* of Winchester are named; reference being made to their charters, upon a question arising out of them.—And yet there is no mention of a corporation, nor any reference to the principles ordinarily applied to those bodies.

**Winches-
ter.**

* We are indebted for the inspection of this book to the kindness of Mr. Edward Griffith of Gray's Inn, in whose possession it is.

Again, in a complaint by a *burgess* of Newcastle-upon-Tyne, that toll had been taken from him at Lynn; the people of the latter place, so far from being described as a corporation, are mentioned only as the "mayor and certain persons of Lynn;" and, in another part of the case, as "those of Lynn." Edw. III.
Lynn.

Thus we see that this term "corporation," here for the first time introduced into the margin of the Year Books, was borrowed from Sir Robert Brooke's Abridgment, who was Chief Justice of the Common Pleas, in the second year of the reign of Philip and Mary, and whose book was first published in 1586, the 28th year of Queen Elizabeth. In referring to the head of "Corporations and Capacities," in that work, it will be found, that of the 91 short placita of which it consists, 24 only relate to *municipal* corporations. All the early cases refer to *ecclesiastical bodies*—as the universities, colleges, abbeys, priories, chantries, societies, hospitals, masters and scholars, chapelwardens, churchwardens, guilds, vicars, dean and chapter—those of *municipal* bodies, which speak of them as *corporations*, are subsequent to the reign of Henry VI. Upon the whole it seems clear, from these facts, that the doctrines relative to corporations were first reduced under a head, and arranged in a tangible form by this author, without any authority to support him in the Year Books, we have already quoted, or, as it will be seen, in those for many succeeding years. In fact it will be afterwards demonstrated, that the *first distinct recognition of a municipal corporation was in the 18th of Henry VI.* with reference to Kingston-upon-Hull,* which had an express charter of *incorporation* granted to it for the first time in that year.—But to proceed with our extracts.

In this term a charter of the king was produced, by which, with the consent of his council, and for 500 marks, he granted to the mayor, sheriffs and *commons*, and their heirs and successors, that the city of *Bristol* should be a county by itself, should be called a county, and severed from the counties of Gloucester and Somerset, with the suburbs and divers bounds, as well by land as by water;

Mich. T.
1374.
Bristol.
Fol. 26 B.

* Vide post. Kingston-upon-Hull, 18th Henry VI.

Edw. III. that they should every year elect a *mayor*, who should be sworn before the preceding mayor; that they should every year elect three men of the city, and should send them to the Exchequer, of whom the king should take one to be their *sheriff*, to make execution of all writs of the court of the king, and that they might hold their courts before the sheriff every Monday; prove wills; and do execution according to their usage.

In the next case which relates to our subject, we find again in the margin the term "corporation," with a reference to Brooke's Abridgment; but there is nothing in the text to warrant it. The case is as follows.

Lincoln.
Fol. 17 B.

The mayor and *commonalty* of *Lincoln* brought a writ of covenant against the mayor, bailiffs, and *commonalty* of the town of *Derby*. In proof of the covenant the plaintiffs showed a special deed by the predecessors of the mayor and the bailiffs of *Derby*, to the mayor and the *commonalty* of *Lincoln*; which declared that the mayor and the commonalty should be quit of murage, pontage, custom and toll in the town of *Derby*, of all merchandise of all those of the town of *Lincoln*, and of all those who have goods in all places of the town, or within the bounds of *Lincoln*: and they counted that certain *burgesses* of the town of *Derby* had taken toll and custom of certain *burgesses* of the town of *Lincoln* in wrong, against their covenant, and to their damage. It was said for the defendants, that this action was founded upon an especial deed, made by the predecessors of the one party, and the predecessors also of the other, and that the writ was general. And by their count the plaintiffs had supposed, that private persons took, and thus arises the variance from the specialty; and they prayed judgment of the count; but it was not allowed. It was then urged for the defendants, that the writ supposed that certain burgesses of *Derby* took custom of certain private persons of the town of *Lincoln*, by which an action of trespass was given to them from whom the goods were taken. And thus the plaintiffs would say that certain burgesses of *Derby* took the customs: but that could not be adjudged in breach of this covenant made by all the

commonalty ; for which they prayed judgment of the writ, Edw. III.
as not warranted by the specialty. But for the plaintiffs
it was answered, that the common officer of the defendants
did this for their common benefit ; and that it was reason-
able that all the town should answer for him ; and all the
commonalty could not come all at one time to take :—where-
fore it was said that the writ was good enough : which the
court determined. Then the defendants stated, that King
Henry, one of the progenitors of the king, gave by his charter
to the mayor and commonalty of Derby, the town to hold in
fee-farm to them and their successors, rendering to our lord
the king 40 marks per annum, as appears by the patent :—
which proves that the town could not be charged or dis-
charged without the king : whereupon the defendants de-
manded judgment, and prayed aid of the king. The plaintiffs
answered, that the charge was made by their own deed,
under the charter of the king, in which case aid is not grant-
able in discharge of their own covenant, which is defeasable
without the king : therefore they prayed judgment whether
they ought to have aid ; and it was held that aid was not
grantable.

This case is abridged in Fitzherbert, title, “ Covenant,” Fitzherbert.
pl. 22 ; but nothing is there said as to its application to any
corporate principle. On the contrary, it is cited in Brooke,
under his head of “ Corporations,” and it was quoted in the
21st of Charles II., in argument by Saunders, in the case of
Mellor v. Spateman,* for the purpose of establishing the
point, that a corporation might take a grant for the benefit
of their particular members, but in quoting it, Saunders does
not use the term “ corporation,” and it does not appear in the
original, but Sir Robert Sawyer quoting it in the 34th of
Charles II., in his argument against the city, in the London London
quo war-
ranto.
quo warranto, without hesitation introduces that term, and
asserts, that it was contended in this case, that the act of the
two burgesses did not oblige the “ *corporation*.” He proceeds
to state that it was admitted that the act of all the members

* 1 Saund. 344.

Edw. III. met together, would oblige the "*corporation*:" and that it was resolved to be a breach binding the "*corporation*;" and that the taking of toll by their officers, was a taking of the toll by the "*corporation*." He states the reason to be given, that all the members of the *corporation*, could not by any common intendment, be understood to meet together to take toll, and concludes by saying, "There is an express judgment that *crimen egreditur personam*, and renders the "*corporation*' liable for wrongs done to a particular member "of another corporation."

In this statement of the case, Sir Robert Sawyer introduces a striking repetition of the term "*corporation*," which was useful for his argument, but not justified by the words of the case. Even if it were supported by the spirit of the determination taken with reference to the principles of the corporation law, as they are now understood; still in the investigation of the time and manner in which the doctrine of corporations was first introduced, it is impossible not to treat this as an unjustifiable representation of the case reported in the Year Books.

We must therefore arrive at the conclusion, that neither the introduction in the margin of this case, nor the application of it by Saunders, or Sir Robert Sawyer, is warranted by the report.

1370.
Lincoln.
Fol. 6.

Two citizens of the town of *Nichol* bring their writ of trespass in the King's Bench, against William Wild, bailiff of the town of Lynne: complaining, that whereas the town and citizens of *Nichol* by charter of the king and his progenitors, were quit of toll in every city and town of England, yet the bailiff had taken certain of their goods and chattels for toll. In answer to which, it is pleaded that they held the town at lease, in fee-farm of our lord the king by charter, rendering to the king 100 marks a year: and they pray aid of the king.

Afterwards the bailiff and commonalty are mentioned.

It seems a singular inconsistency, that in abridging the Year Books, Brooke has not included this case also in his

head of corporations ; if either a grant to the "citizens of a city," or the "men of a town," or the mention of a "bailiff," and "commonalty" imported a corporation. Edw. III.

LIBER ASSISARUM.

We now proceed to the Liber Assisarum, which also belongs to the reign of Edward III.; but which was not published till 1516, the fifth of Henry VIII., when Rastall edited it, with a prologue prefixed.

The abbot of Notre Dame in York brought an assise of novel disseisin against the abbot of Selby, and another of his free tenants in T—. And the writ was challenged, because it was not by the name of the abbot of any church. 1334.
Fol. 17.

We have observed at length upon some of the cases in the last Year Book, that although there is not any reference to a *corporation* in the text, it appears in the margin by references to Brooke's Abridgment, that he has classed them under that head : and the term is inserted therefore in the margin as a reference to Brooke. The same occurs here, and in three other places in the Book of Assises. But as the word "*corporation*" is in neither of these instances to be found in the text, it confirms the inference that the term was not in use at that time ; and that it was adopted at a future period, and used by the printers and publishers of the Year Books in the margin, after Brooke had published his Abridgment.

A question arose, whether in a writ brought against the *mayor and commonalty of York* concerning a thing done in the city, the inquest should be *by foreigners*, or should come from the city.* 1336.
Fol. 26.
Foreigners.

Here it is obvious that the term "*foreigners*" is used for persons inhabiting in the county at large, in contradistinction to persons inhabiting in the city. And the term "*corporation*" does not occur in the text, though it does in the margin, referring to Brooke ; who introduces that word in his abridgment of the case.

The brothers of a hospital are mentioned ; and Brooke, "*corporation*" referred to again in the margin. 1337.
Fol. 33.

* See before, same case, Manuscript Year Book, p. 679.

Edw. III. The *villainage* of two men and their wives is pleaded and allowed.

Fol. 33 B.
Villainage.

1347. The term "*apprentice*" first occurs here,*—but little is to be collected from the use of the term in this record, because it simply speaks of "an apprentice in office;" and there is nothing more in the entry to show what the nature of the apprenticeship was,—excepting that he was to serve for three years, and he was to give eight marks for remaining.

Fol. 83 B.
Apprentice

If apprentices were then frequent, it is singular that they are not spoken of elsewhere in the Year Books.

1348.
Fol. 93.

Lease for life to a villain; the lord claims it as the purchase of the villain.

This is another decisive instance, establishing the doctrine, that all the property of a villain belonged to his lord, and that this principle was then acted upon.

Fol. 100 B. Nota per Thorpe.—That a writ of trespass does not lie against a *commonalty*; but it is agreed in such writs the persons should be named for certainty; for it is said that you should never have a *capias* or *exigent* against a *commonalty*. And this appears in a writ of trespass brought by J. of W. against certain persons and the *commonalty* of the town of S. It was said that the *commonalty* of a town should never be named in any action as defendant or plaintiff: if they have a mayor or bailiffs. But if they have neither mayor nor bailiffs, then the *commonalty* only should be named.

This case is also classed by Brooke under the head of "*corporations*," and a reference to his Abridgment occurs in the margin;—but the reader will perceive it is subject to the observations made before.

Fol. 116 B.
pl. 6.

This case is also entered in the index to the Liber Assisarum, under the title of "*Corporation*." But the term does not occur in this particular case; nor in any other part of the book; neither is there any thing which militates against the position, that the notion of corporations, and the results flowing from it, were a subsequent introduction into our law.

Fol. 123 B.
pl. 6.

A few pages further, the right of the *men of a town* to *common* is stated generally, notwithstanding that right was,

* Vide ante, London, Edw. II.

by Gateward's case,* restrained to those inhabitants of Edw. 111.
a town who could prescribe in right of ancient houses.—
And although an action is spoken of as maintainable by *the*
men of the town, nothing is said of their being *incorporated*.

The charter to Wilton, in Wiltshire, is pleaded; and a Fol. 159.
pl. 13.
Wilton.
claim made under it:—but nothing said of its being a *corpo-*
ration.

The *mayor and commonalty of Winton* are mentioned, and Fol. 188 B.
pl. 19.
Winchester
they plead by their bailiff; and the men (*gantz*) of the town
are spoken of as contradistinguished from *foreigners*, who are Foreigners.
to make inquest when the mayor and *commonalty* are parties.

But nothing is here said of the mayor and commonalty
being a *corporation*. Neither is this case, nor the two pre-
ceding, entered by Brooke in his Abridgment under that
title; nor are they so entered in the index to this Book of
Assises.

We have before quoted, in the documents relative to Lon- Fol. 227.
London.
don, a case describing the qualification for citizenship. The
same description again occurs in this book, in a case in
which it is stated, that from all times the custom of the city
of London has been, that *each citizen* could devise his tene-
ments and goods, as well in mortmain as otherwise; which
franchise was affirmed by charter of the father of the king, in
his 11th year, to the *citizens*; and that *every man who had*
lands in the city was a citizen. It was said for the king, that
he allowed the citizens ought to have such franchises, namely,
those to whom the franchise extended:—that is to say, *those*
who are born and inheritable in the same city by descent of
heritage, or who are resiants, and taxable to scot and lot;
and its franchise was thus declared and claimed in Eyre, and
by their petition it ought not to be extended to any other
persons: and it was stated, that the testator in that case was
not of such condition, because he was a *foreigner*. But it
was said for the defendant, that it was not denied that the
testator was a citizen. The court however said, because it is
not denied that he was not *resiant*, nor *taxable*, nor *inherited*
by succession, he was not a *citizen*, to whom alone this

* 6 Coke's Rep. 60.

Edw. III. franchise could descend. And it cannot be denied, that the lands were not aliened in mortmain; and in another case it was so adjudged before this time. And the court awarded, that the king should have execution, &c.

It is impossible to define more precisely than in this case, the qualifications which gave to a person the title to be a *citizen* of London; and the reader will not fail to observe, how strictly conformable they are with the doctrines of the common law, and our previous statements; for we have urged, that it was not by *tenure alone* that a person became a citizen. And in this case, the custom of London is described to have been, not only that those who were *born* and *inheritable* in the city by descent were to be citizens; but also those who were *resiant*, and taxable at *scot and lot*:—which, coupled with other requisites of the *common law*—namely, that they should be of *free condition*—should be *sworn* and *enrolled*—and be *householders*, (as not only required upon the principles of the common law, but also as a necessary concomitant of their being taxable to *scot*, and liable to perform *lot*, which presuppose personal residence, and the necessary occupation of a taxable house,) combined all the qualifications of a full *free citizen*, and *law-worthy man*.

1364. The bailiffs of the town of *Dartmouth Hardingne*, claim
Fol. 229 B. cognizance of all pleas, and plead a charter granted to the
pl. 25. bailiffs and *commonalty*; but nothing is said of their being
Dartmouth. a corporation.

1365. In an assise of novel disseisin,* which R. Paine and his
Fol. 232 B. wife brought against W. of H. and Rob. of F. of lands in
Salisbury. *Salesburie*, it was said, that Salisbury was an ancient burgh, in which there had been a mayor and bailly from time immemorial, &c.; and that all lands which a man had by purchase in the town were devisable, and always had been so. And a writ *ex gravi querelâ* was sworn respecting these lands, before the mayor and the bailiff of Salisbury; and issue was joined thereon; and there was a finding by the inquest; and the record was exemplified under the great seal of the

* See also Fifth Year Book.

king. In answer to which it was said, that a long time Edw. III. before an assise of novel disseisin was brought for the same lands before *Shard* and his companions, justices assigned; &c. and a verdict of assise was found; and execution allowed afterwards by force of a writ of *ex gravi querelâ*; and it was denied that the mayor and bailiff of S. had jurisdiction in such a kind of plea. But it was answered, that Salisbury was an ancient burgh, and that the mayor and baily had been so from time immemorial, &c., and that this plea appertained to them of right, for otherwise the testament cannot be put in execution. And a day being given for delivering the judgment, the question was stated, whether such jurisdiction of common right belonged to the ancient burghs or not; and it was said that they had then sufficient means for the purpose without this jurisdiction; for in every burgh and city the custom is, that a man can enter without other execution; and in any place they will be put out by the baily: and they have also jurisdiction to put the devisee in execution by writ of *ex gravi querelâ*, by which it seems the averment, that they have not such jurisdiction, is receivable. And it was further urged, that of necessity such jurisdiction was given to ancient burghs; and that the mayor and baily have had and used this jurisdiction in holding such plea from time immemorial, &c.

In an assise of frank-tenement in Lodelowe, it was alleged that the town of Ludlow is enclosed with walls, and from time immemorial has been held to be a burgh, and that all lands which have been purchased, have immemorially been devisable; but it was denied that the *commons* had any record to prove that the town was a burgh, and they have not pleaded as a burgh, by *ex gravi querelâ*; and we say they have been *taxable to the fifteenth as an upland town*; and *upland towns are not burghs*: in which case by the common law, the tenements are not devisable. And it was also said, that where lands are devisable, they are pleadable in the same town, per *ex gravi querelâ*: and the writ directs *quod cives possunt legare tenementâ sua tanquam catalla*: and of this nothing is shewn here. They have not alleged that the lands

1366.
Fol. 250.
Ludlow.

Edw. III. are parcel of any grant in fee, which is subject to such usages; thus they have shewn nothing to carry the assise. To that it was said, that in some towns, the younger issue by the usage would inherit; and in others would be partible among the males: and this is likewise the condition of the land from time immemorial. And it is here alleged, that in all times the condition of the land was such, that by the usage, the purchasers can devise; by which it seems that enough has been said to have the assise. And tenements in a town or burgh are always devisable: and that condition is on account of the soil, which has always been the use, as alleged. But it was held that this was not the case of a franchise granted, which would follow the person—as, to be quit of toll—or of holding plea of all manner of pleas—which they agree should be maintained on account of being a *burgess* or *citizen* in a city, or burgh:—but the condition of this land is on account of the soil, and at all times has been of such condition, and not at common law; and the justices directed they should call the plaintiff;—by which he was nonsuited, &c.

The reader will remember that this and the last preceding case, harmonize with the first charter granted to the city of London by William the Conqueror:—by which he gave to them as burgesses, the power of freely devising their lands, which seems to have continued to be the usage of *all boroughs* to this period.

1377.
Mortmain.
Fol. 262.
pl. 24.
Fol. 275.
pl. 33.

Lands coming into the hands of ecclesiastical persons are spoken of as being *in mortmain*:—which shows that the doctrine of perpetual succession was at that time applied to *ecclesiastical* persons: but it does not then appear to have been applied to *municipal* bodies:—which had they been recognized as corporations, must have been the case.

Fol. 254.
pl. 17.

The bailiff of the franchise of *Ipswich* is spoken of; but nothing is said of the town being incorporated.

Fol. 266.
pl. 4.

In a subsequent case, a prior is first described as *perpetual*, and he is said to have a common seal, with power to plead, and be impleaded; but the same capacity and powers do not appear any where in this book to be applied to *municipal* bodies.

In the next case, the corporate powers of *ecclesiastical* bodies seem to be more clearly and distinctly defined than in former cases; but it must be remarked, that this is not extended to *municipal* bodies. Edw. III.

A prior of the House of Lepers of Plimpton, brings an assise of novel disseisin against the Prior of Plimpton Priory, and made his plaint of a corody, that every day of the week he should have certain viands, as a canon of the same house:— and it was objected, that the assise was brought by the name of the Prior of the House of Lepers, he being a *layman*; and that in the house of which he claims to be prior, there is a *congregation* of poor people of *their own authority*, without other foundation; and in which house there is not convent, college, nor common seal.

1373.
Fol. 284.
pl. 4.

It was protested for the plaintiff, that he had no knowledge of that, but that he brought his writ as Prior of the same house, by the *election* of his brothers of the house, and that there have been priors of the same house by *election*, in the same manner, from time immemorial.

But it was urged again for the defendant, that the house had neither foundation, college, nor common seal, but that they were *lay persons*; and if such an election was made amongst them, it was no rule they could have it by law, as you cannot by law make those who have no priories able to have an action by the name of priors. But it was held, that as they did not deny that a prior had always been elected in the same house, the writ was good.

It must be remarked, in confirmation of what we have before observed, that the objection here made to the plaintiffs being enabled to enjoy the grant, was, that they were *lay persons*, and not *ecclesiastical*; showing clearly, that it was supposed at that time, such privileges could be enjoyed only by the ecclesiastics, and not by the laity.

The abbot of *St. Oswalde of York*, is stated among other things to be free of gilds, and of all services and secular actions. And a grant is made by him, with the consent of the chapter, under the common seal.

1376.
Fol. 324.
pl. 6 B.

Edw. III.

WALES.

Having concluded our extracts from the important records of the Year Books for this reign, we proceed to quote the few charters which will be necessary to establish that the boroughs of Wales, Scotland, and Ireland continued in the same relative position, with respect to those of England.

This will be proved by the charters in this reign to Bala and Cardiff.

North
Wales.
Bala.

The king granted to the burgesses of Bala, in Penthlyn, in the county of Merioneth,* their town to hold, to them, their heirs and successors, *burgesses of the town*, at fee-farm for ever—rendering at the Exchequer at Carnarvon, 10*l.* 12*s.* annually.

1340.
Cardiff.

Hugh le Despencer, lord of Glamorgan, granted to the burgesses of the town of *Cardiff*, that they and their *heirs* should be free of toll, murage, &c.; and that they might choose annually from the burgesses, four provosts, from whom the constable of the castle should take two at his discretion, to be the king's bailiffs; and two ale tasters, who should be received and sworn at the Exchequer of Cardiff, before the constable: that they should be accountable for the issues of their bailiwick; and for their services should be quit for the year of the rent of one *burgage*:—that notice of all merchandise coming to the town should be given to the provost: and that none of the burgesses should be imprisoned in the castle, as long as they could find pledges at the outward gate of the castle: and that inquests as to all things done in the borough, should be determined by the *inhabitants*, and not by others. That neither the burgesses nor their *heirs* should be made receivers of the king's rents, &c.: that they should be free to sell: and that they and their *heirs* might freely bequeath their *burgage* tenures: that they should not be compelled to go out of the ancient bounds, or the liberty of the town, on any business against their will. That no stranger should buy any merchandise out of the fairs or markets within the bounds of the boroughs, but only burgesses; except the *natives*

* Rot. 25.

of Glamorgan, for their victuals, and not on account of ^{Edw. III.} merchandise; nor should any hold any shop of any merchandises, &c., unless he should have been *living* with the burgesses, and paying *scot and lot*, and received into the guild of the liberty. ^{Cardiff.}

It was also granted to the burgesses and their *heirs*, that they might make a guild among themselves, with the usual clause as to the liability of debts. That no bailiff or officer should make summons or attachments within the bounds of the borough, but the constable and bailiffs of the town, elected by the burgesses themselves:—that they should have common of pasture:—and attachments in the hundred court of the town were provided for. That all merchants and others who lived by buying and selling, should *reside* in the borough, and *not in the uplands*; and that they should transact their merchandise in the fairs and markets of the town, and not elsewhere. That neither the burgesses nor their *heirs* should keep any watch; nor keep any fugitive in church without the walls: that they should have assise of bread and ale, and that the burgesses should not be bound by any claims made in the county of Glamorgan:—that they should have their own prison, and execution before the constable, and two fairs, with the toll and custom due to the king, also power to hold pleas of the crown during the fair. And that no merchant should buy any merchandise out of the fair.

There was likewise granted to the burgesses, all pleas and complaints in the hundred court of the town, excepting pleas of the crown, forestalling, *homesoken*, and pleas of land:—the constable to hold the hundred court, and pleas of pie-powder, and to be mayor of the town.

In this charter, we perceive, that the *burgages* of the bo- ^{Burgages.} rough are twice mentioned; so that burgage tenure ought to have prevailed in this borough, as well as others, if that peculiar right had any legal foundation—but there has never been any trace of it in Cardiff.

The merchandise being brought into the town, and the finding of pledges at the castle gate, the reader will remember are founded on the early English laws.

Edw. III. The inquests, it will be observed, are to be taken by the
 Inhabi- *inhabitants*. The exemption from all services without the
 tants. borough, is in strict conformity with the laws, charters, and
 practice of the English boroughs. The prohibition against
 Strangers. trading within the borough, for *strangers*, is also in strict
 analogy with the usages of this part of the kingdom ; and
 Natives. *natives* are mentioned—respecting which we have quoted so
 many of our early law authors. In the same manner also,
 we find reference to the payment of *scot and lot* ; and the
 necessity of being in a guild, to authorize a person to open
 a shop and trade, is defined with a precision even more dis-
 tinct than in the English charters. The exclusion of the
 other bailiffs of the king, and the substitution of a local
 jurisdiction in the hundred court, characterises this grant, as
 well as the English charters. The same distinction is also
 preserved between the *borough*, uplands, and foreigners, which
 we have remarked in the numerous documents before quoted ;
 and we find likewise a reference to watch and ward—the
 assise of bread and beer—and the exemption from suit to the
 county—in all which provisions this charter resembles those
 of England.

1359. This king also confirmed the grant of Edward II., to
 Edward Le Despencer, cousin and heir of Hugh Le De-
 spencer, and to the then burgesses, and other men, tenants
 of Cardiff—Usk—Caerlyon—Newport—Coubridge—Neath
 —and Kenfig.

IRELAND.

One or two charters will prove the same points with respect
 to Ireland.

1338. Thus, Edward III. established, that the same privileges
 Dublin. were intended to be continued to the city of Dublin, by
 confirming the charter which was granted by King John to
 that city.

1363. And in the 37th year of his reign, confirmed to the citizens,
 their *heirs*, and successors, the former charters ; by Letters
 Patent, which commence by reciting,* that considering the

* Rot. Cart. 37 Edw. III. n. 1.

laudable services which the citizens had rendered the king, Edw. III.
Dublin. particularly in defending the city—and that they might be able the more peacefully to carry on their commerce—and as certain privileges had been confirmed to the cities of Waterford and Cork, and the town of Drogheda—the king grants to the citizens of Dublin, all the privileges which those cities enjoyed. That the mayor, chosen every year from among themselves, might, in the presence of the *commonalty*, take his oath before his last predecessor. That the citizens, their *heirs* and successors, citizens of the city, should have the *return of writs*; that no minister of the king might enter the city, unless on the failure of the mayor and bailiffs of the city—except in four pleas, rape, arson, forestalling, and treasuretrove. That the citizens should not be impannelled upon juries without the city, so long as they should be residents there: and that they should not be impleaded without their city, but within their walls, in their guildhall—except concerning pleas of foreign tenure, which do not appertain to the hundreds of the city. That the mayor and bailiffs might hold cognizance of all pleas; and that none of the citizens should be impleaded without the city; and that they might account by their attorneys; and that no bailiff of the king should take any citizen as long as he could obtain any bail, unless for felony. That the citizens, their heirs and successors, citizens of the city, might hold the city, with all the liberties and free customs they had theretofore enjoyed.

That the mayor and citizens might hold their court; and according to their petition, which stated that the foreign merchants, had bought and sold in the city, engrossing the profits of merchandise there, yet making no contribution towards the charges incumbent on the city—the king therefore granted, that all foreign merchants who should buy or sell within the city, should pay with the citizens, to talliage and other charges upon it.

The provisions of this charter are in perfect conformity with the English; and the cities of Dublin, Waterford, Cork, and the town of Drogheda, are all placed upon pre-

Edw. III. The inquests, it will be observed, are to be taken by the
 Inhabitants. *inhabitants*. The exemption from all services without the
 borough, is in strict conformity with the laws, charters, and
 practice of the English boroughs. The prohibition against
 Strangers. trading within the borough, for *strangers*, is also in strict
 analogy with the usages of this part of the kingdom ; and
 Natives. *natives* are mentioned—respecting which we have quoted so
 many of our early law authors. In the same manner also,
 we find reference to the payment of *scot* and *lot* ; and the
 necessity of being in a guild, to authorize a person to open
 a shop and trade, is defined with a precision even more dis-
 tinct than in the English charters. The exclusion of the
 other bailiffs of the king, and the substitution of a local
 jurisdiction in the hundred court, characterises this grant, as
 well as the English charters. The same distinction is also
 preserved between the *borough*, uplands, and foreigners, which
 we have remarked in the numerous documents before quoted ;
 and we find likewise a reference to watch and ward—the
 assise of bread and beer—and the exemption from suit to the
 county—in all which provisions this charter resembles those
 of England.

1359. This king also confirmed the grant of Edward II., to
 Edward Le Despencer, cousin and heir of Hugh Le De-
 spencer, and to the then burgesses, and other men, tenants
 of Cardiff—Usk—Caerlyon—Newport—Coubridge—Neath
 —and Kenfig.

IRELAND.

One or two charters will prove the same points with respect
 to Ireland.

1338. Thus, Edward III. established, that the same privileges
 Dublin. were intended to be continued to the city of Dublin, by
 confirming the charter which was granted by King John to
 that city.

1363. And in the 37th year of his reign, confirmed to the citizens,
 their *heirs*, and successors, the former charters ; by Letters
 Patent, which commence by reciting,* that considering the

* Rot. Cart. 37 Edw. III. n. 1.

laudable services which the citizens had rendered the king, Edw. III.
Dublin. particularly in defending the city—and that they might be able the more peacefully to carry on their commerce—and as certain privileges had been confirmed to the cities of Waterford and Cork, and the town of Drogheda—the king grants to the citizens of Dublin, all the privileges which those cities enjoyed. That the mayor, chosen every year from among themselves, might, in the presence of the *commonalty*, take his oath before his last predecessor. That the citizens, their *heirs* and successors, citizens of the city, should have the *return of writs*; that no minister of the king might enter the city, unless on the failure of the mayor and bailiffs of the city—except in four pleas, rape, arson, forestalling, and treasuretrove. That the citizens should not be impannelled upon juries without the city, so long as they should be residents there: and that they should not be impleaded without their city, but within their walls, in their guildhall—except concerning pleas of foreign tenure, which do not appertain to the hundreds of the city. That the mayor and bailiffs might hold cognizance of all pleas; and that none of the citizens should be impleaded without the city; and that they might account by their attorneys; and that no bailiff of the king should take any citizen as long as he could obtain any bail, unless for felony. That the citizens, their heirs and successors, citizens of the city, might hold the city, with all the liberties and free customs they had theretofore enjoyed.

That the mayor and citizens might hold their court; and according to their petition, which stated that the foreign merchants, had bought and sold in the city, engrossing the profits of merchandise there, yet making no contribution towards the charges incumbent on the city—the king therefore granted, that all foreign merchants who should buy or sell within the city, should pay with the citizens, to talliage and other charges upon it.

The provisions of this charter are in perfect conformity with the English; and the cities of Dublin, Waterford, Cork, and the town of Drogheda, are all placed upon pre-

Edw. III. ciscely the same footing. So that it may with safety be inferred, that, notwithstanding any slight variances in the charters, or the usages of the English or Irish boroughs, they were all originally intended to be, in substance, the same; particularly as it appears, that the king granted a confirmation to the citizens of Waterford, their *heirs* and successors, of the charters of Henry III., Edward I., and Edward II.: which it will be remembered, were in conformity with the provisions of the Saxon and English laws and customs.

1330.

SCOTLAND.

With respect to the Scotch boroughs at this period we have little information, excepting that David II., in the 22nd of Edward III., holding a Parliament at Perth, a statute was passed by the three estates of the realm, providing, that as long as the two boroughs of *Berwick* and *Roxburgh*, which were two of the four courts, remained in the hands of the English, the boroughs of Lanark and Linlithgow should be received in their places. In the directions which follow for the regulation of the jurisdiction and proceedings of the court, it was, amongst other things, ordained, that all matters concerning the utility of the common weal of the king's boroughs, their liberties, and courts, should be ordered and determined at it. And in one of the sections, provisions are made relative to the assise of bread and flesh, and the disturbers of the peace, within the boroughs. All these regulations presenting the strictest analogy to the boroughs in England.

Regiam
Majestatem
Court
Baron.

In the same book with the *Regiam Majestatem*, is usually found the form of holding a court baron—which is clearly not of so early a date as that work, but is said to have been written some time after.

Insuitors
and
Outsuitors.

In the 3rd section, both the *insuitors* and *outsuitors* of the court are mentioned—which is one of the circumstances clearly distinguishing that court from the court leet; the latter being, from its very nature, confined to *resiants* within the leet—whilst the tenants of the manor, who are the suitors

at the court baron, may, or may not, be resident within the Edw. 111.
manor.

Throughout this work, another distinction also between the court baron and court leet is apparent—namely, that the jurisdiction of the former is confined to civil suits between parties—and the proper jurisdiction of the latter, is in criminal cases and matters of police.

In the 17th chapter, the four boroughs of *Edinburgh, Stirling, Lanark*, and *Linlithgow*, are mentioned; as well as the burgh of *Haddington*; where the chamberlain sits; before whom three or four of the most discreet burgesses of the other boroughs are to appear, on appeals against judgments in the borough courts. Four
Boroughs.
Cap. 17.

From what has been stated before, it would seem that this work must have been written after the laws of the four courts were made by David II.; by which the boroughs of Lanark and Linlithgow were substituted in the place of Berwick and Roxburgh.

In the 68th chapter it is stated, that any strangeable man Cap. 68.
—that is, any one who has aught within the jurisdiction of the baillie, by which he may be distrained—may be a *borgh*.

David Bruce granted a charter to his faithful *burgesses* of *Inverness*, and the *community* of the borough, demising to them: at fee-farm and in fee for ever, all the borough, with Drekeis in the county of Inverness, to hold to the community and burgesses, and their *heirs* for ever, in fee and inheritance, &c.; with the fisheries, mills, mill toll, and their proceeds, with the toll and little custom of the borough—with all liberties, &c., and appurtenances to the town, &c. belonging, rendering therefore 80 marks. 1331
to
1343.
Inverness.

This charter is granted to the *community*, the burgesses, and their *heirs*: but there is no mention of successors, nor any words referring to a corporate body, or conferring corporate rights, except that of giving them the borough in perpetuity; which, however, it must be remembered, was then frequently done; and lands and property were so held, without the bodies holding them being treated as corporations.

Edw. III. Amongst the statutes enacted during the reign of this

Cap. 12. king, the 12th chapter contains four sections against vagrants
Vagrants. and for their imprisonment; and the same is repeated in the 14th chapter of the book on capital crimes. In the 12th chapter of pecunial crimes, it is directed, that if a man is found without a master, he shall be charged to seek one; which if he does not, he shall pay aucht kye, and shall be put in the king's ward until he find a master.

Cap. 16. The 16th chapter requires malefactors who are summoned, to appear within *forty days*; which is also the time allowed for appeal by any of the king's lieges who find themselves excommunicated by any unjust or wrongous process, under the statutes of Robert III.

Sec. 2. And by the 2d section, sheriffs, provosts and baillies, failing to put in execution the act against beggars, and every person who is found begging, should pay to the king, 3*s.* 4*d.*:—that is to say, those who are not crooked, sick, impotent; or weak folk.

Sec. 3. The 3d section directs, that provosts and baillies of boroughs should keep the streets free from beggars, under the pain of 40*s.*

Cap. 19. Chapter 19 of the same book provides, that all earls, lords and barons of Parliament, prelate, or burgh, being lawfully warned, and absenting themselves from Parliament without lawful excuse allowed by the lords of the articles, should forfeit—every earl, 300*l.*; every lord, 100*l.*; every prelate, 200*l.*; and every burgh, 200 marks.

Cap. 27. Chapter 27 provides, that every man should *dwell at home in his own house*—and that no person other than hostellers should receive any *strangers*.

Cap. 39. By chapter 39, wapinshaving was to be made by all men between 60 and 16 years, under certain pains pecunial.

Residence. In the form of process before the lords of council—added at the end of the Regiam Majestatem—the 4th chapter, which concerns the service of summons, divides it into personal—and at the *dwelling place*—which is described to be *where the defender makes daily residence with his wife, bairns, house,*

and family. Nam uniuscujusque domus et familia ibi esse intelligitur ubi ejus uxor habitat*—which is in precise accordance with the doctrine we have before adopted as the rule of residence in England. Edw. III.

In the book concerning crimes, neither capital nor pecunial, chapter 11 provides, that no man shall be suffered to beg betwixt 14 years and threescore and ten years; and idle men shall be compelled to pass to the king's ships, and labour therein, under the pain of banishment:† because idle men, who have not of their own, shall be kept in ward until they find *burgh* or caution—that the country should be unscaithed of them; and the same being found, the sheriff should cause them to get a master, or to fasten them to lawful craft; and if they fail they shall be put in prison, and punished at the king's will.‡ Cap. 11.

Chap. 47. It is not lawful to any burgh to sell their freedom and privilege, under the pain of tinsel of their freedom,§ which was also in substance declared to be law in England, in the case of *Rex v. Breton*.|| Cap. 47.

Chapter 50. If any man is disobedient or rebel within burgh, his house shall be cast down, and he shall be banished forth of the burgh.¶ Cap. 50.

A provision precisely similar to what we have before seen in the customals of the Cinque Ports.

The chapter of the justitia general, near the end of the *Regiam Majestatem*, section 16, speaks of the *inhabitants* lying in different sheriffdoms; and directs in what courts they shall answer. And the 25th chapter speaks of the *inhabitants* of stewartries and bailleries. Inhabitants.

In chapter 30, the baillies of burrows are directed to be called upon to say, if they are ready to present to the king's justice, &c., each burghess indicted within their burgh. Cap. 30. Burgesses.

All these provisions, in a greater or less degree, confirm

* Jac. V. Parl. 6, c. 75, l. 1, sec. 1.—Et ibi Bartol. ff. de liber agnoscend.

† James IV. Parl. 4, c. 49.

‡ James I. Parl. 3, c. 66.

§ James VI. Parl. 11, c. 112.

|| 4 Burr. p. 2260.

¶ *Leges Burgorum*, c. 122.

Edw. III. with respect to Scotland, that which we have asserted as to Wales and Ireland; and it is impossible to withstand the conviction resulting from all these documents, that the same system of county and borough jurisdiction originally existed in all the three divisions of the empire, although they may now vary in some particulars, having been perverted and deformed by local customs or usurpations.

Conclusion. We have now arrived at the conclusion of the documents relative to this reign—not more celebrated for its military exploits, than for the great advances which were then made towards the formation of a more permanent and better regulated system of government.

Hume justly observes, “there is no reign among those of the ancient English monarchs, which deserves more to be studied than that of Edward III.; nor one where the domestic transactions will better discover the true genius of that kind of mixed government which was then established in England.”

The records which have occurred during this long dynasty, have afforded us some of the most important facts to illustrate our subject.

Thus, besides the important results to be collected from the statutes and charters,—that the freemen and villains, the shires and boroughs, were still contradistinguished from each other,—that the burgesses still continued the same class as before,—that there were no additional traces of corporations,—that the boroughs of Wales, Scotland, and Ireland, were upon essentially the same footing as those of England—we find in the records relative to London, the precise and distinct description of whom the body of the burgesses or citizens consisted;—viz., of ALL THOSE WHO WERE BORN INHERITABLE IN THE CITY, OR WHO WERE RESIDENTS, AND TAXABLE TO SCOT AND LOT;—which was the deliberate decision by a court of competent jurisdiction, upon a question distinctly brought before them:—so that we may with certainty rely upon the fact, that this class of persons were at that period the citizens of London;—and if that be correct, the

same class of persons would continue to be the citizens to the present day, unless the qualifications have been altered by some competent authority ; a subject it will be necessary for us to investigate, when we arrive at the statute passed in 1725, 11 George I., relative to the elections for London. Edw. III.
11 Geo. I.

If this was the proper description of the persons who were the citizens of London, and we are accurate in the position,—which the numerous charters we have quoted establish—that the burgesses of all the boroughs were the same;—it then follows, that this was likewise the real description of all the other citizens and burgesses. And when we consider in addition to this, that all the laws which we have cited, both of the Saxon and Norman periods—as well as the subsequent compilations and treatises—all tend to confirm the same doctrine ; there can be no rational doubt that this is the legitimate definition of a burgess.

There is also another point of equal importance, which is decisively put at rest during this reign, viz., the non-existence of municipal corporations, and the total silence with respect to them in all the statutes and records ; a point placed beyond the possibility of doubt, by the facts we have collected, relative to the subsequent introduction of the term in the printed copies of the Year Books.

The documents we have extracted with reference to the universities, also establish the same point ; and fix the period when the ecclesiastical bodies began to be interwoven with the municipal institutions.

We therefore close this long and important reign with the satisfactory conclusions, that THERE WERE NO MUNICIPAL CORPORATIONS AT THAT PERIOD,—THAT THE CITIZENS AND BURGESSES WERE THE FREE INHABITANTS OF THE PLACE, WHO WERE BORN HERITABLE THERE, OR WHO WERE RESIDENTS PAYING SCOT AND LOT WITHIN IT ; and as a necessary consequence of those facts, were SWORN AND ENROLLED THERE AS BURGESSES.

RICHARD II.

We have now advanced to the shorter—weaker—and less important reign of the degenerate son of the Black Prince; and we shall consider the documents according to the arrangement we have hitherto adopted.

STATUTES.

Purveyors. In many chapters of the statutes, traces of the public anxiety to be protected from the abuses of purveyors, are strikingly exemplified.

**1377.
Cap. 6.** The 6th chapter directs, that commissions shall be awarded, to inquire of, and punish the misbehaviour of tenants and land tenants, in villainage, to their lords. The book of Domesday is mentioned, as well as the manors and towns where the villains are described as dwelling; and gives to the lord, remedy against the excesses of those persons.

Cap. 7. The 7th chapter prohibits the giving of liberties for maintenance.

**1378.
Cap. 1.** In the 1st chapter provisions are made, that all merchants might buy and sell within the realm, without disturbance—the preamble reciting, that “great complaint had been made, that in many *cities, boroughs, ports of the sea*, and other places, the citizens, burgesses, and other people, had not suffered the merchant strangers to sell their commodities, to any but them of the cities, boroughs, &c., by which means a great dearth had been created.” The act provides, that all merchants, aliens, in amity of the king, should thenceforth safely come; and in all *boroughs, cities, ports of the sea*, fairs, and markets, abide with their goods, under the protection of the king, as long as they pleased, without disturbance or denial of any person—except that all wines should be sold in gross and not at retail, in any of the

cities, boroughs, or other towns franchised; but only by the *inhabitants* and *freemen** in the same. In another part of the statute, those who are to sell by retail are described, as only the "citizens and burgesses," in their own cities and boroughs, and other good towns franchised. The merchant strangers were to pay all the customs and subsidies due. All charters and franchises preventing their selling, being thereby annulled. And the king's officers of the cities and boroughs are described, as the mayor, bailiffs, or other that have the keeping of such franchise. And other towns and places where no franchise is, and the bailiffs and constables, or other wardens of them, are mentioned.

Rich. II.

Inhabitants
Freemen.

In the 5th year of Richard II., it was enacted, "That all
"and singular persons and *commonalties*, which from hence-
"forth shall have the summons of the Parliament, shall
"come from henceforth to the Parliaments in the manner as
"they are bound to do, and (have) been accustomed within
"the realm of England of old times. And if any person of
"the same realm, which from henceforth shall have the
"same summons, be he archbishop, bishop, abbot, prior,
"duke, earl, baron, banneret, knight of the shire, citizen of
"city, burgess of borough, or other singular person, or
"*commonalty*, do absent himself, and come not at the said
"summons, except we may reasonably and honestly excuse
"him to our lord the king—he shall be amerced, and other-
"wise punished, according as of old times hath been used
"to be done, within the said realm, in the said case. And
"if any sheriff of the realm be from henceforth negligent in
"making his returns of writs of the Parliament—or that he
"leave out of the said returns, any cities or boroughs, which
"be found, and of old time were wont to come to the Par-
"liament—he shall be (amerced, or otherwise) punished, in
"the manner as was accustomed to be done in the said case
"in times past."

Stat. 2.
Cap. 4.

1381.

In the 6th year of Richard II., stat. 1, chap. 9, the English

1382.

* "Freemen."—Considering the several documents extracted in this and the preceding reigns, it is impossible that this term could here apply to any but the "*liberi homines*" of the common law. It cannot be referred to any corporate meaning.

Rich. II. title of the chapter is, "That no victualler shall execute a
 Town judicial place in a city or *town corporate*."

Corporate. The reader is no doubt aware, that the title forms no part of the act; and after a very careful investigation of the original Statute Rolls, at the Tower of London, no authority whatsoever is to be found for the insertion of the term "corporate."

We therefore have no hesitation in asserting, that the expression "town corporate" does not occur upon the Statute Roll; and was therefore introduced, without authority, at some subsequent period:—being a similar interpolation to that which we have seen practised in the Year Books of the preceding reign. It would be singular if it did—for it would be the only document of that period containing such a term; for we have before seen, that the statute relative to the merchant strangers, which speaks of the cities, boroughs, ports, or towns franchised, mentions nothing of corporations. And the same observation may be made with respect to the last statute of the 5th of Richard II. chapter 4.

It is certainly extraordinary, that in the recent authorized publication of the Statutes of the Realm, the same error is continued of introducing the term "corporate," in this and other places of the Statute Book—which is altogether excusable, being unjustified by any warrant of the original rolls, which have no titles—and totally unnecessary to the completion, or explanation of the text. The translation of the statute is as follows:—

"Item.—It is ordained and enacted, That neither in the city of London, nor in other *cities, boroughs, towns, or ports of the sea*, through the realm, any victualler shall have, exercise, or in anywise occupy any judicial office, but in such town where none other person sufficient may be found to have the same office. In which case, nevertheless, the same judge, for the time in which he shall continue in the said office, shall utterly omit and abstain, as well by himself as his servants, from the exercise of victualling, upon pain of forfeiture of his victuals so sold."

The following chapter, relative to aliens selling in England, Rich. 11.
again mentions *cities, boroughs, and towns, as well within* Cap. 10.
liberties as without; but makes no allusion to corporations.

The 11th chapter, which relates to the sale of fish by Cap. 11.
hosts in *cities and towns* provides, that all hosts, as well of
the city of London, and the towns of Great Yarmouth, Scar-
borough, Winchester and Rye, as also in all other *towns* and
places upon the coast of the sea, and elsewhere, *as well*
within liberties as without, shall abstain from forestalling.

Notwithstanding the above enumeration of towns and
liberties, there is no mention of corporations or towns cor-
porate.

The English title of the next chapter has the same term Cap. 12.
introduced, for it is described to be an Act, that "All chief
" officers of towns *corporate* shall be sworn to observe the
" aforesaid ordinance respecting fishmongers;" but there is
no such expression upon the statute rolls. The translation
of which is as follows:

"Item.—It is ordained, that every mayor of London for the
time being, especially amongst other things, shall be charged
on his oath, to be given to him at the king's Exchequer, that
he shall hold and keep the ordinance of fishmongers and
victuallers made as is aforesaid within his bailiwick; and
the same, all favour set apart, shall from time to time require
to be put in due execution. And likewise, in the same
manner from henceforth, let all the mayors and bailiffs, and
all other governors of *cities, boroughs, and towns*, and of
such victuallers, in every *place* through the said realm,
within liberties and without, be specially charged in all their
oaths to be taken upon their new creation in their offices,
that they shall cause such ordinance of victuallers to be
holden and firmly kept in their bailiwicks, as much as to
them and every of them pertaineth."

The 7th Richard II., chapter 11, enacts, inter alia, "That 1383.
Cap. 11.
London.
all the vintners and victuallers, as well fishers as other,
coming with their victuals to the city of London, shall be
from henceforth under the governance and rule of the *mayor*

Rich. II. and *aldermen* of the said city for the time being, as in time past it hath been used."

From whence it appears, that the mayor and aldermen then, and for a long time past, had been the rulers and governors of the city.

1385.
Cap. 2.

The 9th Richard II., chapter 2, recites, Whereas divers *villains* and *neifs*, as well of great lords as of other people, as well spiritual as temporal, do fly within *cities*, *towns*, and *places enfranchised*, as the city of London, and other like, and feign divers suits against their lords, to the intent to make them *free* by the answer of their lords:—It is accorded and assented, that the lords nor others, shall not be forebarred of their *villains*, because of their answer in the law.

From this statute we see most distinctly, that the doctrine of villainage was still acted upon; and that the prescription of manumission by the neglect of the lord, was by this law in some slight degree restrained.

1387.
Cap. 7.

In the 11th year of Richard II., chapter 7, other enactments were made respecting merchants, aliens, and denizens;—and although the same enumeration occurs of *cities*, *boroughs*, *towns*, *ports* and *other places*, yet there is *no reference to any corporation*; nor in this case, even in the English title which precedes this statute.

The same observation may be made upon the 11th chapter in the same year; and the 12th of Richard II., chapter 13; and also upon the statute as to servants in husbandry, in the same year, chapter 3.

This last statute is an ample confirmation of many of the principles of the Saxon laws; and recites and confirms the former statutes by the same king, and further ordains, that no servant nor labourer shall depart at the end of his term out of the hundred, rape, or wapentake where he is *dwelling*, to serve or dwell elsewhere, or by colour to go from thence in pilgrimage, unless he bring a letter patent containing the cause of his going, and the time of his return, if he ought to return, under the king's seal, which for this intent shall be delivered to the keeping of

Vagrancy.

Residence

some good men of the hundred, rape, wapentake, *city*, or *borough*, after the discretion of the justices of the peace to be kept; and that about the same seal there shall be written the name of the county; and athwart the said seal, the name of the hundred, rape or wapentake, *city* or *borough*; and also, if any servant or labourer be found in any *city* or *borough*, or elsewhere, coming from any place, wandering without such letter, he shall be immediately taken by the said mayors, bailiffs, stewards or constables, and put in the stocks, and kept till he hath found surety to return to his service,* or to serve or labour in the town from whence he came, till he have such letter to depart, for a reasonable cause. And it is to be remembered, that a servant or labourer may freely depart out of his service at the end of his term, and to serve in another place, so that he be in a certainty with whom, and shall have such letter as afore. But the meaning of this ordinance is not, that any servants, which ride or go in the business of their lords or masters, shall be comprised within the same ordinance for the time of the same business; and if any bear such letter, which may be found forged or false, he shall have imprisonment of *forty days* for the falsity, and further till he hath surety to return, or serve or labour, as before is said. And that none receive servant or labourer going out of their hundred, rape or wapentake, *city* or *borough*, without letter testimonial, nor with letter testimonial *above one night*,* except it be for cause of sickness, or other cause reasonable, or which will and may serve and labour there by the same testimonial, upon a pain to be limited by the justices of the peace; and that as well artificers and people of mystery, as servants and *apprentices*, which be of no great property, and of which craft or mystery a man hath no great need in harvest time, shall be compelled to serve in harvest, to cut, gather, and bring in the corn; and that these statutes be duly executed by mayors, bailiffs, stewards, and constables of *towns*.

The 5th chapter of this year relates to the same subject *Cap. 5.* matter, and ordains, that whosoever used to labour at the

* Sax. Ll.

Rich. II. plough and cart, or other labour of service of husbandry,
 Residence till they be of the age of 12 years, shall from thenceforth
 abide at the same labour, without being put to any mystery
 or handicraft; and if any covenant, or bond of *apprentice*, be
 from henceforth made to the contrary, the same shall be
 holden for nought.

Cap. 7. So also the 7th chapter provides, that every person who
 goeth begging, and is able to serve or labour, shall be
 dealt with in the same manner as he who departeth out of the
 hundred, &c., as aforesaid; except people of religion, and her-
 mits having letters testimonial of their ordinaries. And that
 the beggars impotent to serve, shall abide in the cities and
 towns, where they be *dwelling* at the time of the proclama-
 tion of this statute; and if the people of *cities* or *other*
towns will not, or may not suffice to provide for them, that
 then the said beggars shall draw them to *other towns*, within
 the hundreds, rape, or wapentake, or to the towns where they
 were born, within *forty days* after the proclamation made, and
 there shall continually abide during their lives. And that
 all of them that go in pilgrimage as beggars, and be able to
 travail, it shall be done as of the said servants and labourers,
 if they have no letters testimonial of their pilgrimage, under
 the said seals. And that the scholars of the universities that
 go so begging, have letters testimonial of their chancellor,
 upon the same pain.

Cap. 9. In the 9th chapter, provision is made for the execution
 of the Statute of Labourers within *cities* and *boroughs*, by the
 sheriffs, mayors, bailiffs, and wardens of gaols.

In the code of laws contained in the last preceding statutes,
 relative to labourers, *apprentices*, beggars, and impotent
 persons, we trace the important link which connects the Saxon
 laws with those which are at present in use, with respect to
 the provision and settlement of the poor.

Responsible residence was the broad basis of the Saxon
 law; and to insure it, vagrancy was prohibited, and the
 removal from one place to another not allowed, excepting
 under the security of responsible pledges, or the testimonials
 of persons to whom they were known. In the same manner,

we perceive in these enactments, that the removal of servants Rich. II.
and others from place to place, without testimonial letters,
is prohibited, in conformity with the principles of the Saxon
laws:—to the analogy with which, the more modern practice
of granting certificates may be attributed.

As a consequence of this restraint upon capricious change
of residence, it was necessary to define where such persons
should permanently dwell; and therefore it is declared, “that
“they shall remain where they were resident at the time of
“the proclamation of that statute”—an early statutable
recognition of the *settlement*, under the common law, *by*
residence. But if the places in which they were so resident
could not support them, they were to depart within *forty days*
to those where they were *born*—the first statutable recog-
nition of the *settlement by birth*. The title to the privileges
of burgess-ship—as well as to support in case of poverty—
thus depend upon the same general principles:—and are
connected either with actual permanent *residence*; or with
the title permanently to inhabit within the place, by reason
of *birth*. And therefore it was, as we have before seen, that
birth in London was one of the qualifications for a *citizen*;
as here it is a title to *maintenance*. It appears from the
corporation records of the city of London, that a proclama-
tion was made in the 51st of Edward III.,* that all those 1377.
who were enfranchised of the freedom of the city of London,
should be *residing* within the city, within eight days, on pain
of losing their freedoms: and that the freemen of the city
who were within it, should not pass the franchise without
leave of the mayor, upon the same penalty. And hence we
perceive the connexion established between those rights.

It should also be remarked, that both these titles are
recognized with reference to the *common law* divisions of
the county,—into *hundreds*—*wapentakes*—and *towns*:—and
not with reference to *parishes*; which we shall find hereafter
applied to the matters of relief and settlement by the statutes,
in the reign of Queen Elizabeth, subsequently to the disso-
lution of monasteries.

* H. fo. 73 B.

Rich. II.

The statute of Richard II., upon which we are commenting, also provides, that these vagrants are to be sent away within *forty days*; which is in strict conformity with the principles of the Saxon laws, and with the records we have before quoted. This likewise appears to be the first statutable recognition of compulsory removal; upon which the present practice of removing the poor was probably founded: and it was evidently from the same provision, that the *forty days*' residence without removal, became so important a feature in the poor laws. The principle upon which that period is mentioned in the statute, and which is borrowed, as we have repeatedly remarked, from our earliest laws, being clearly this—that if the pauper was allowed to remain 40 days unremoved, it was to be presumed, either that he belonged there by birth, or otherwise; or that the place was able and willing to support him—it being always borne in mind, that it was after the period of *forty days*, that the tithingman was bound to report a *resiant* to the king's officer, for the purpose of his being sworn and enrolled.

Another class of persons referred to in these laws, also requires particular consideration.

Appren-
tices.

In the reign of Edward II., the *apprentices* are mentioned in the articles for the government of the city of London, and they occur again in one of the statutes in the reign of Edward III.:—they are referred to, more particularly in the fifth chapter of this reign.

1388.

We have already explained the principles extracted from Glanville, and our other legal treatises, upon which the *apprentices* were considered entitled to be treated as *freemen*, or *liberi homines*:—it therefore only remains here shortly to observe, upon the first reference to them in our public documents; and the general nature of their situation at this time.

1292.
20 Edw. I.

The first mention which we have discovered of *apprentices* is on the dorse of a writ in the Parliament Rolls, 20th Edward I., by which writ the king enjoined J. de Mettingham and his companions, that they should by their discretion, provide a certain number from every county, of the better and more

lawful and the most free to learn, by which they might understand what would best avail, and be most fit for their court, and the people of the kingdom; and that those whom they should elect for this purpose, should follow the court, and should intromit themselves in the business in that court, and not others. And it seems to the king and his council, that seven times 20, (140) would suffice; nevertheless let the said justices appoint more if they should think fit.”

Rich. II.
Appren-
tices.

Although the writ is indorsed “*De Attornatis et Apprenticiis*,” and the same title is entered in the margin, yet the term “*apprentices*” does not occur in the body of it; so that this appellation was not probably in use at the time of the framing of this writ, but became so soon afterwards, when the marginal note and indorsement were added. That the terms “*attornati et apprenticii*” were subsequently affixed, is the more probable, because, as is observed in the margin of Spelman’s Glossary, it seems attorneys did not exist in the 20th Edward I.

These apprentices appear to have been particularly addicted to the law, and were perhaps of the same grade as the barristers of modern times.*

When the term was first applied to those learning crafts or mysteries, does not distinctly appear. The first allusion to the apprentices of the crafts, of which we are aware, is in the London articles. We next find them in the statutes of the reign of Edward III. In the 12th year of which reign, the word is also used in a deed,† in its present signification. In the 21st of Edward III., they are mentioned in the *Liber Assisarum*,‡ which is followed by this statute of Richard II.:—from whence the reasonable inference is, that the term had been at that time introduced into general use; and that binding by covenant or indenture was the general form of apprenticeship.

In the 10th of Richard II., from a memorandum at this period, we find that it was ordained by the mayor, aldermen,

1387.

* It is suggested by some, that they were the attorney’s clerks; by others, that they were the serjeants.

† Ken. Par. Ant. Gloss. verb. App.

‡ Lib. Ass. 83 B. pl. 18.

Rich 11.

Appren-
tices.

and common council, that no foreigner should be enrolled an *apprentice** nor be received into the franchise of the city, by way of apprenticeship, unless he first swear he is a *freeman*, and *not a native*.—In which document, the term “freeman,” as applied to apprenticeship, is evidently used in the sense of the ancient common law expression, “*Liber homo* ;” and not in any corporate meaning:—and is applied in contradistinction to the term “native,” borrowed from the early law of villinage, to which we have before attributed the origin of apprentices becoming free.

The name is afterwards again applied particularly to the apprentices of the law, in the clause introduced into the parliamentary writ in the 6th year of Henry IV., by which
1404. the sheriff is prohibited from returning to Parliament any *apprentice*, or *any other man of the law*: where the term is evidently used as only applicable to lawyers.

1405. In the next year, the 7th of Henry IV., a statute was passed, prohibiting persons from binding their children as apprentices, unless they had 20s. in land or rent. From which it would seem, that it was then the practice to apprentice children to “misteries or crafts.” For it is recited, “that although former statutes had directed, that those who were engaged in husbandry should remain at their labour, without being sent to “misteries or crafts;” and that covenants or licenses to the contrary were void; nevertheless, that children *born* within the towns and lordships of *upland*, whose fathers and mothers have no land or rent, nor other living, but only their service or mystery, be put to serve as *apprentices* to divers crafts within *cities* and *boroughs*, sometime at the age of 12 years, and sometime within; so that there is so great scarcity of labourers and other servants of husbandry, that the gentlemen and other people of the realm be greatly impoverished for the cause aforesaid: and it was ordained, that *no* man nor woman, of what estate or condition they be, should put their son or daughter, of whatsoever age he or she be, to serve as *apprentice* to any craft or other labour, within any *city* or *borough* in the realm, except he have land

* *Liber Niger*, fol. 66.

or rent to the value of 20s. by the year at the least, but they shall be put to other labours, as their estates doth require. And any covenant to the contrary should be holden void. And every person that would make his son or daughter *apprentice* to any craft within *city* or *borough*, should bring to the mayor or bailiffs of the said city or borough, a bill sealed under the seals of two justices of the peace of the county where such infant was born, testifying the value of the lands or rents of his said father and mother, as afore is said. And that in every *leet*, be it in the king's hand, or of any other, once in the year all the labourers and artificers *dwelling* in the leet should *be sworn* to serve, and take for their service after the form of the said statutes." Rich. II.
Appren-
tices.

An indenture of apprenticeship in Latin, of about this date, is stated by Madox, in his *Formulare Anglicanum*, to have been in existence in the Augmentation Office.

The statute of Henry IV. appears to have produced some difficulties to the citizens of London, and a petition was presented in the 8th year of Henry VI., to the Commons in Parliament by the mayor, aldermen, and commons of the city of London,* stating, that amongst other franchises it had been granted to them by the king and his progenitors, that the manner of taking apprentices in their city anciently used should be observed. That by the immemorial usage of the city, every person who was not of *villain estate or condition*, but of *free estate and condition*, might himself place his son or daughter in apprenticeship to any *freeman* of the same city, to learn his art or mystery; and that every *freeman* of the city could take such person in apprenticeship. That they had been vexed by colour of an article in the statute of the 7th of Henry IV., directing that no one should put their son in apprenticeship but those who had to the value of 20s. a year in land or rent. And they pray that the ancient custom may be observed: referring also to the Statute of Labourers—12 Richard II. 1429.

The king directs, that the ancient custom shall be ob-

* Pet. Parl. n. 20, p. 354.

Rich. II. served as long as it pleases the king, and that the petitioners shall not incur the penalties of the statute.

Appren-
tices.
1436.

Apprentices are said to be mentioned at this date in the ordinances of the Sadlers' and Glovers' Companies of Newcastle-upon-Tyne.*

1562.

The 5th Elizabeth, chap. 4, authorizes any person, being a *householder*, to take as an *apprentice* the son of any *free-*

1660.

man, not occupying husbandry. And in the 12th and 13th of Charles II., in an action of covenant, upon an indenture of apprenticeship, it was averred in the declaration, that the custom of London was that time out of mind, every *free-man* had been accustomed to take *apprentices*.† In the 13th and 14th of Charles II. the settlement of the poor by apprenticeship was recognized:—which concludes the references necessary to be made upon this head.

The result of the whole is, that there is no reason to believe that *apprentices* existed before the time of legal memory;—and consequently, that there can be no prescriptive rights respecting them. Next, that the first apprentices which are mentioned, are those which were addicted to the study of the law—That the first legislative enactment with regard to them, is in restraint of children being indiscriminately bound as apprentices—That from the earliest times they appear to have been bound by covenants and indentures; a solemn contract of which kind must have been requisite to give full effect to the principles we have before adopted, for the purpose of explaining their manumission from their lords. And, finally, it should be remarked, that they were to be sworn in the *court leet*, which we have before shown would be requisite by the common law. They were also required to be bound to *freemen*, both in London and generally; which, for the reasons we have adduced, could only mean the “*liberi homines*” of the common law:—for they could not be bound to *villains*; nor if *villains*, could they be bound at all, as is expressly recognized in the London petition; and they obtained, under the general operation of the Poor Laws, a *settlement* in the place in which they had served,

* 2 Brand, 367.

† 1 Lev. 12.

as *fixed and permanent inhabitants* there, by virtue of their *Rich. II.*
binding and residence.

Thus it is clearly demonstrable, THAT APPRENTICES HAD NOT THEIR ORIGIN IN ANY CORPORATE PRINCIPLE:—nor had any connexion with corporations; but that their condition rested upon the earliest principles of our common law; and they have gradually risen to their present state, and present rights, by the combined effects of the common and statute law, without the slightest reference to corporations.

The statute 12 Richard II., chapter 12, relative to the expences of knights of the shire, ordains that the levying of them should be made as hath been used; and if any lord, or any other man spiritual or temporal, had purchased any lands or tenements, or other possessions that were wont to be contributory to such expences before the time of the purchase, the lands, tenements, and possessions, and the tenants of the same, should be contributory to the said expences, as the same lands, tenements, and possessions were wont to do before the time of the purchase.

1388.

This statute, in fact, recognizes the exemption of spiritual persons from these expences; but makes them liable, according to the principles of the common law, for lay fees recently acquired.

In the 15th chapter, it is ordained, that the king's castles and gaols, which were wont to be joined to the bodies of the counties, and be now severed, shall be rejoined to the same counties.

1391.

This clause seems to confirm the doctrine we have so often asserted, that the castles were distinct from the boroughs, and belonged to the counties.

Castles.

The 5th chapter recites the statute of *mortmain*, 7 Edward I., statute 2; and provides, that no religious persons shall continue to hold lands in perpetuity, without license from the crown, and ~~it adds~~, that "the same statute should extend and be observed of all lands, tenements, fees, advowsons, and other possessions purchased, or to be purchased to the use of *guilds* or *fraternities*. And moreover it is assented, be-

Mortmain
1391.

Guilds.

Rich. II. "cause mayors, bailiffs, and commons of *cities, boroughs,*
 "and *other towns which have a perpetual commonalty,* and
 "others which have offices perpetual, be *as perpetual as*
 "*people of religion,* that from henceforth they shall not
 "purchase to them and to their commons or office, upon
 "pain contained in the first statute de religiosis."

From this statute it is evident, that the doctrine of mortmain did not before apply even to guilds or fraternities; and still less to mayors, bailiffs, commons of cities and boroughs, and other towns which are stated to be perpetual bodies; but it is obvious, that they were only considered as such by natural succession, and not by any artificial notion of a body corporate or politic. Had they been so, this statute would have been unnecessary: and therefore its enactment is a strong confirmation of the position we have adopted, "that there were no municipal corporations recognized before this period." Nor does this statute recognize them, but merely declares in substance, that this succession of individuals in a town, being as perpetual as the succession of the clergy, in abbeys, priories, &c., therefore grants of lands to them, are within the same mischief, and consequently should be within the same remedy. But it must be remembered, it does not describe the cities and boroughs as incorporated, or make them incorporations.

The anxiety of Parliament to uphold and preserve the common law, may be seen in the preamble of the 12th chapter of this year. And we should also observe with respect to Liverymen the *liverymen*, who have in modern times become so important a body, that the statute of the 10th year of this reign, chapter 4, provides against yeomen, and all under the estate of esquires, taking any livery called "livery of company," from any lord, if he be not menial, and continually dwelling as one of the family in the hostel of the lord. The same provision is in substance repeated in the second chapter of the 20th of Richard II.

PARLIAMENT ROLLS.

With respect to the city of *London and Southwark*, we find upon the *parliament rolls* of this reign, the following records:—

The mayor, aldermen and commons of the city of London, in consequence of victuallers, felons, &c., escaping punishment from the city, by going into Southwark, where the ministers of the city cannot arrest them, in consequence of the court of the Marshalsea being there, notwithstanding the said town had been granted to them; pray a re-grant containing the express words, "That the ministers of the city can make due executions and punishments upon the malefactors in the town, according to the usages and customs of their city; that no ministers of the Marshalsea, or any other except the ministers of the city, issue in the said town, that is to say in that part which is called *gildable*,* any attachment or other executions whatsoever, but that such part of the town, should remain perpetually annexed to the jurisdiction of the city, in manner as the other suburbs of the same city."†

Here we have a part of Southwark, which was not originally a borough, but belonged to the county of Surrey, described as "*gildable*:"—a term frequently applied before in the same manner.

The citizens of London also petition for a confirmation of their former charters;‡ which is granted. And they pray for the continuation of the following four franchises:—

1st.—That no stranger of their franchises should sell or buy of another stranger, any merchandises within the franchise of their city, under forfeiture, &c.; and that all controversies on this head, may be taken away by the grant of the king's charter.

The king wills it to be between merchant and merchant only, saving the privileges of his lieges of Acquitain.

2nd.—That as the citizens of London have not from ancient

* See before, 1293, 21 Edward I.

† Pet. Parl. n. 30, p. 19.

‡ Pet. Parl. n. 1, et seq. p. 27.

Rich. II. times been accustomed to receive the commands or orders of any lord, constable, seneschal, steward, marshal, &c., but only the mandates or commands of the king, sealed with his public or private seal, except the mandates of the justices, according to the form of their charters; the citizens, in order to appease all future controversies on this head, pray that this also may be expressed by the charter of the king.

The king answers, that it should be used as of ancient time.

3rd.—That as it has been customary that only the citizens should inquire of the customs, impositions, metes, and bounds of the franchise of the same city; and of purprestures, and all other things within the franchise, regarding the commonalty of the city; the citizens pray that this also may be expressed by the charter of the king.

The king answers, that the customs, impositions, and purprestures, should be inquired of by themselves. And as to the bounds and metes, they should be defined, if any doubt there be.

The 4th claim relates to the lands and possessions of orphans. And they generally claim that their charters should be favourably interpreted.

The king answers:—The interpretation of charters belongs to the king. And if any doubt should arise, the king, by the advice of his council, would make such interpretation as should be accordant to reason and good faith.

The citizens farther claim a right to enjoy *any franchises* that the king and his progenitors might think proper to *grant to any city or borough in England*.*

The constable and marshal of England pray, that the mayor and sheriffs of London may answer for a contempt before the council, in having hindered and disturbed him in doing right, and executing justice in causes which appertain to his jurisdiction in the city of London, upon them who were *enfranchised* in the said city.†

1378. The clergy, lords of the realm, justices, serjeants at law, and other lay people, who are not continually *resiant* in

* Pet. Parl. n. 4, p. 28.

† Pet. Parl. n. 4, p. 30.

London and other towns, are exempted from the payment of Rich. II. tenths and fifteenths for their houses, horses, books, vessels, or other goods, on account of their residence there.*

In this document, the doctrine of *resiancy* is expressly maintained, as subjecting the party to the liabilities and burdens of the place; and is, in conformity with our former assertions, confined to continual residence.

An entry on the Parliament Rolls of the 17th of Richard II., chapter 11, recites the grants by Edward II. and Edward III. 1393.
—that the *aldermen* of the city of London should be removed from their office every year, at the feast of Saint Gregory; and that they should not be re-elected the year next ensuing; but that other sufficient persons of the city should be every year newly elected. Nevertheless, for the better governance of this city, it was ordained,—

“That thenceforth the aldermen be not ousted from the office of alderman, at the feast of St. Gregory, nor at any other time of the year, without good and reasonable cause, nor any other elected in their places; but that they should remain from year to year in their said office, until they be removed for just and reasonable cause as above, notwithstanding the ordinances aforesaid.”

The following entry also occurs in the 12th chapter—
“Although it were ordained and granted by King Edward, great grandfather to our lord the king that now is, in the 28th year of his reign, that the mayor, sheriffs, and aldermen of the city of London, which had the governance of the city, should cause to be redressed and corrected, the errors, defaults, and misprisions, which were notoriously used in the city, for default of good governance of the mayor, sheriffs, and aldermen; and the same duly punish from time to time, upon a certain pain, that is to say, at the first default, 1000 marks to the king; and at the second default, 2000 marks; and at the third default, that the franchise of the city should be taken into the king’s hand: and that every of the mayor, sheriffs, and aldermen, which should appear before the king’s justices,

* Pet. Parl. m. 3, p. 48.

† Rot. Parl. 317.

Rich. II. in manner and form as is ordained by the said statute, and should answer particularly for himself, as well at the peril of others which be absent, as of himself; and that such ordinance should be holden firm and stable, notwithstanding any manner of franchises, privileges, or customs, as in the said statute is more fully contained.—Now our lord the king, considering the generality of the said words, that is to say, ‘errors, defaults, and misprisions,’ and the several intendments which may thereof be conceived, hath, at the supplication of the mayor, sheriffs, and aldermen of the city, declared and granted, by the advice and assent of the lords spiritual and temporal, in this present Parliament, that it is not his will, nor his intent, nor the intent of the said statute, that the mayor, sheriffs, and aldermen of the said city, who now are, or have heretofore been, or hereafter shall be, should incur nor suffer the pain of the said statute, for any erroneous judgment given within the said city.”

The 13th chapter recites, that the ward of Farringdon Within and Without the city of London, is so increased in possessions and inhabitants therein, within these few years past, that the governance thereof, is too laborious and grievous for one person to occupy and duly govern the same—our lord the king, by the assent of his council in this present Parliament, at the prayer of the mayor, aldermen, and *commonalty* of the city, hath ordained and granted, that between this and the feast of Saint Gregory next coming, the people of the ward of Farringdon Within, may elect an alderman, wise, sufficient, and able to govern the said Ward Within, and to be named—the alderman of the ward of Farringdon Within; and that between this and the feast of Saint Gregory, the people of the ward of Farringdon Without, may elect another alderman, wise, sufficient, and able to govern the said Ward Without, and to be named—the alderman of the ward of Farringdon Without. And that the said two aldermen so elected, may be established, and not removed, except for cause reasonable, as is ordained and granted.

We also find on the Parliament rolls of this reign, a recog-

dition of the law of villainage, as being then acted upon, in Rich. II.
the following entry :*— Villainage

David Tregoyts issues a writ de homine replegiando, against the Earl of Warwick, and others, directed to the sheriff of Cornwall; and the suit therein, for determining upon the *villainage*, having been several times adjourned,—the earl had permission granted to him, that it should be determined in the King's Bench, without nisi prius being granted during the plea.

CHARTERS.

In pursuance of the petitions to Parliament in the first London.
year of this reign, the king, with the consent of Parliament, 1377.
granted a charter to the citizens of London, reciting, by *inspeximus*, and confirming, all their former charters; also granting and confirming to them, notwithstanding the statutes which were passed in this reign, that no foreigner should buy or sell within the liberties of the city. And that the citizens were not bound by the precepts, or process of the constables, marshals, &c., but only those at the king's suit; and authorizes the citizens to take inquisition by themselves, as prayed.

In the 7th year of this same reign, another charter is 1383.
granted to London, referring also to petitions presented to Parliament by the citizens. And the king also gave another confirmation of all the former charters; and granted that no summons, attachment, or execution, by any ministers of the king, should be made within the liberties of the city, but by their own officers. And that they should be restored to all their former liberties, notwithstanding any non-use, or abuse of them.

With respect to the *tenure* of London, there is no doubt that it continued to be held, as it always had been, by *burgage tenure*; for there is an inquisition, post mortem, of the 6th year of this reign, upon the death of Roger Lestrangle which finds, that he was possessed of one great tenement, Burgage Tenure.

* Pet. Parl. n. 8, p. 326.

Rich. II. Lincoln's Inn, in St. Andrew's, Holborn, in the suburbs of London, held in *free burgage, as the whole city of London*.

1390. In the 13th year of this reign, there is another inquisition, before the mayor, as the king's escheator, upon the death of Roger Clifford, stating, Clifford's Inn to have been held by him in *free burgage, as the whole city of London*.* And similar documents occur in the 15th of Richard II., the 3rd and 4th of Henry IV., the 10th Henry V., and in the reigns of Henry VI., and Henry VIII.

The citizens of London having obtained the restoration of their civic rights, and secured the confirmation of them by the king, appear to have applied themselves to correct the abuses which had crept into the administration of their elections and affairs, by their own misconduct. Deputies, or representatives from the wards, had, in the reign of Edward III., been chosen, as persons who were to be summoned by the mayor, to deliberate for the common good of the city; and persons elected in the same manner, as deputies, or representatives, were also to make the elections.

It is however obvious, that both these bodies were only deputed by the wardmotes; and having nothing but deputed authority, it was liable to be rescinded by the same power which had created it.

However, during the continuance of this deputed authority, it seems either to have occasioned, or to be charged with occasioning abuses—which were afterwards attempted to be corrected, by expedients more objectionable than those for which they were substituted. For, at the close of the reign of Edward III., it was ordained, by many of the chief citizens, that the persons whom we have before named, instead of being selected by the wardmotes, should for the future be nominated by the trading companies—a thing altogether unauthorized by the common law, or any of the charters of the crown.†

From these illegal proceedings, greater confusion and irregularity is stated to have prevailed; and the citizens at

* Mad. Fir. Bur. 22.

† Norton, 153.

large still persisted in interfering at the meetings, and at the elections. Rich. II.

We have been unable to examine the original ordinances and records of the city, which relate to these circumstances ; and therefore we are obliged to quote these facts from the accurate work of Mr. Norton, who states, that, in the 7th year of this reign, by an ordinance of the whole commonalty convened for the purpose, the former mode of nomination by the trading companies, was repudiated ; and the elections were directed for the future to be made, as they originally had been, at the wardmotes. 1384.

Unquestionably this was, in every respect, a more legal and constitutional method—more consistent with the general law, and the particular charters of London ; because the latter meetings were, in fact, courts recognized and sanctioned both by the one and the other ; and the suitors were there acting under the oaths they had taken in the wardmote :—whilst, upon the other hand, the trading companies had no such original legal foundation, nor legally the sanction of such oaths. And it should always be borne in mind, by whatever mode these persons were selected, they possessed only a delegated authority, which could at any time be recalled, by those from whom it had been derived and conceded. Nevertheless, Mr. Norton states, “that although the ordinance of the 7th of Richard II. corrected the former abuses in many respects, yet it did not affect the meetings in common hall ; which, therefore, continued for many years afterwards, to consist of persons appointed by the trading companies.” So difficult is it, when an abuse has once existed, perfectly to correct it—particularly if, having continued for some time, the original nature and object of the institution which is abused, has been partly obliterated, or perhaps altogether forgotten.

Rich. II.

THE UNIVERSITIES AND BOROUGHS OF OXFORD AND CAMBRIDGE.

We now proceed to the records relative to the boroughs and universities of Oxford and Cambridge, as far as they may tend to illustrate our subject.

1377. The king, in the first year of his reign, granted to the *burgesses* of *Oxford*, a charter confirmatory of their previous liberties. And in the next year, confirmed the liberties and privileges granted to the university by Edward III.

1391. In the 14th year of his reign, he re-granted to the chancellor, his deputies, and successors, the jurisdiction over all the members of the university, and their servants and attendants: and further directed, that the pleas should be held at any place within the town, or any other place within the precinct of the university—which is mentioned here for the first time:—the chancellor's jurisdiction being always before spoken of, with reference to the *persons* of the scholars and students, and not to any *local limit*. The limits of the borough are specifically mentioned in a subsequent charter of the first of Edward IV.

This charter also contains a non-intromittant clause, as to all judges, sheriffs, mayors, bailiffs, and other ministers of the king;—and enables the chancellor, his deputy, and his successors, to imprison offenders in the castle of Oxford, or elsewhere in the town;—and that the sheriff of Oxford, the keeper of the castle, the mayor and bailiffs of the town, shall receive them, and keep them in custody.

We find upon the Patent Rolls,* a declaration from the king, that the visitation of the university of Oxford belongs to the Archbishop of Canterbury, and not to the king.

1381. The king in the fifth year of his reign granted to the chancellor and scholars of the *university of Cambridge*,† the custody of the assise of bread and wine—which was a part of the jurisdiction of the *leet of the borough*—and the cognizance of all other personal pleas,—with power of imprisonment when

* Rot. Pat. p. 3, m. 9.

† 4 Inst. 228.

the master and scholars, or their servants were either party. Rich. II.
 That no other justice, sheriff, or minister should intromit, unless the chancellor should make default. And the king prohibited the official of the court of Canterbury, and the Bishop of Ely, that they should not send their inhibitions or citations to the chancellor of the university, to the injury of the liberties, or to the disturbance of the cognizance and execution of pleas. 1378.

In the second year of the same reign, the *men* of Cambridge render an account in the Exchequer,* in which the mayor and bailiffs of the town are mentioned.

In the sixth year of Richard II., there were proceedings in an action, in which the plaintiff declared for an assault and false imprisonment; and the defendant, on the behalf of the mayor and commonalty of Cambridge, claimed cognizance of the plea, and for that purpose he cited all the charters that had been granted to the borough of Cambridge, and among them one by Henry I. The king then sent a writ to the judges of the court, directing them to inspect those original charters; which the judgment of the court states they had done, and that they had found them to be correct; and they allowed the cognizance, as the liberty and franchise was claimed. 1382.

During this reign the mayor appears to have had the general care of the town,—the charge of keeping it clean and free from nuisances, and that the inhabitants were bound to keep the streets paved.

BRISTOL.

It appears that *Bristol* and the suburbs were at this period in the possession of two keepers of the town, at fee-farm,† who held it in the same manner as the mayor and commonalty had held it by the grant of Queen Philippa, then lately Queen of England, reserving to the king all his royalties and liberties in the same town; and also saving the constableness of the castle. But it seems that in the same year, the king re-granted their privileges to the citizens, by giving 1378.

* *Mad. Fir. Bur.* 8.

† *Rot. Fin. pl. m. 17; 1 Pet. MS. 57.*

Rich. II. them a confirmation of the charters of the 5th, 21st, and 47th of Edward III.

1396. The king in this year again confirmed all the former grants, although not used; and directed that the steward, marshal, and clerk of the king's household, should not sit in the city of Bristol:—as before had been granted in substance to the citizens of London.

Liverpool. 1339. This king also gave a charter to *Liverpool*, containing by inspeximus the charters of King John and Henry III., and the confirmation of Edward III. And granted that no person not of the guild, should buy or sell any merchandise in the borough without the consent of the burgesses.

This is another instance, establishing that the merchant-guild related to the privileges of buying and selling within the borough, and was not connected, like burgess-ship, with its police or municipal government.

Newcastle-upon-Tyne. 1377. In the first year of this reign, we find a writ to the mayor and bailiffs of *Newcastle-upon-Tyne*, for levying upon the commonalty of the town the wages of the members of Parliament.

Inhabitant Householders. It is obviously to be inferred, that the commonalty upon whom this levy was to be made, must have been the *inhabitant householders* within the borough: because they could only have been subject to such an impost in case they were *residing* there; and there would be nothing to levy upon, unless they were *householders*. Nor could they be subject to this charge if they were *villains*, and not of *free condition*. If then they were *freemen*, *inhabiting houses* within the borough, they necessarily would, as such *free residents*, have been *sworn* and *enrolled* at the court leet; and in respect of their houses, they must have paid *scot* and *lot*. Therefore being *free inhabitant householders*, *sworn and enrolled*, and *paying scot and lot*, they would be the full *Burgesses*. *burgesses* of the place; entitled, amongst other things, to vote for members of Parliament; and on the same grounds bound to pay the levy for the wages of the members whom they had elected.

1399. In this year, the king granted a charter to separate the

town of *Newcastle-upon-Tyne* from the county of *Northumberland*, and to make it a distinct *county* of itself. It is observable, that there is *no* express mention, in the above charter, of *any exception of the castle*, or castle yard. Rich. II.

There is at the Rolls Chapel, a private act of Parliament for putting this castle, and the yard, into the county of Northumberland, for the convenience of the judges at the assises. The act must have been obtained soon after the above charter of separation:—for in 1447, 25 Henry VI., in an inquisition, dated January the 5th, it is mentioned in the following words, “Apud Castrum Domini Regis de novo *Castro super Tynam in comitatu Northumbriæ.*” As also, in a subsequent entry, in the “*Bolden Buke,*” of a memorial of the 1st of Edward IV., it is described as follows:—“Be it remembre, that I, Rob. Rodes, satt at the castell, in the *Newcastel-on-Tyne*, in the county of *Northumberlande.*” 1447.
1461.

It is also said to be in the county of Northumberland, in *a more recent charter to the corporation* of Newcastle.

In an old manuscript, entitled, “A copy of Sir Thos. Tempest *instruccions to defend the town of Newcastle's rights* against a survey lately returned, wherein” it is certified, that the greatest part of the town is held of the town—and, speaking of the charter of separation by Henry IV., it is observed, “but the castle was still reserved for the prison of *Northumberland.*”

A licence was granted by this king to the mayor and citizens of the city of *York*, their *heirs* and successors, to purchase lands, tenements and rents, to the value of 100*l.* per annum, to be holden of him in *burgage*, with the city and suburbs, for the support of the bridges of Ouse and Foss; and the same to be certified into chancery, that it could be done without damage of the king or of others. York.
1377.
Burgage.

That they should have cognizance of all pleas of assise, of novel disseisin, &c. of all manner of lands and tenements within the city, &c. before all justices and ministers of the king, to be holden and kept before the mayor and bailiffs in the guildhall.

That the keepers of the peace, and justices assigned to hear

Rich. II. and determine felonies, &c. in the three ridings within the
 York. county of York, or in any places of the same, should not intermeddle within the city, &c.

That the mayor and 12 aldermen of the city, and their successors, or four, three, or two of them, with the mayor, should have full correction, punishing, hearing and determining all things and matters, as well of all manner of felonies, trespasses, imprisonments, and extortions, as of all other causes and quarrels whatsoever, happening within the city, &c.

That the *city* of York, with the suburbs and precincts of the same, according to the then limits and bounds, and which are now contained within the body of the county of York, be from henceforth clearly separated and exempted from the *county*, in all things, as well by land as by water, and that the city of York, and suburbs of the same, and precincts, be from henceforth a *county by itself*, and be called for ever "*the county of the city of York*."

That every mayor of the city should be the *escheator* in the city, &c.

That the *citizens* and *commonalty*, instead of their three bailiffs, should have two sheriffs, &c.; and should choose every year, of themselves, two fit persons for their sheriffs in the city, &c.; which sheriffs forthwith, after their election in due manner, should take their oaths in due form before the mayor, whose names should be sent yearly for ever under the common seal of the city unto the Exchequer, &c.

That the said sheriffs of the city might hold their county court on Monday, from month to month, &c.

That the mayor, sheriffs and aldermen, with the *commonalty* of the city, their *heirs* and successors, for ever, should have the forfeiture of victuals, by the laws to be forfeited, viz. bread, wine, ale, and all other things that do not pertain unto merchandise.

That the stewards and marshals of the king's house, and the clerk of the market, from henceforth should not enter or sit within the liberties of the city, nor exercise their office there, nor inquire of any thing done, or to be

done, within the liberty; nor do in anywise intermeddle themselves, &c. Rich. II.

York.

That the coroners of the city, and their successors, might exercise their office, as well in the presence of the king as in his absence, as they have ever been accustomed.

That the citizens be not bound to attend nor obey any precepts or commandments of the constables, marshals, or admirals of England, nor the keepers of the marches towards Scotland, nor any of the king's officers or ministers, &c.; except of the king's great and privy seal, &c.; and the commandments of the king's justices, according to the form of the statutes, &c.

That foreign merchants, not being *free* of the city, should not sell any merchandise to any other merchant not being free; neither should any foreign merchant buy any merchandise within the liberty of the city of any foreign merchant; always provided, that against rebels, and the king's enemies of Scotland, to resist, &c.

That the hundred or wapentake of the Ansty, with the appurtenances in the county of the city of York, be annexed and united to be parcel of the county; and that the suburbs of the city, precincts, hundred or wapentake, and every one of them, with their appurtenances, and every thing that is contained in them and every of them, (except the castle of York, and its towers and ditches pertaining thereto,) be of the county of the city of York, as well by land as by water; and that all bailiffs of free lieges within the county of the city of York, be attendant and obedient only to the precepts and commands of the sheriffs of the county of the city of York, and to no other sheriffs.

That the mayor, citizens, and their successors, have all goods and chattels of felons, fugitives, &c.

That the mayor and citizens should have for ever all and singular the customs of things to be sold, coming to the city, without any account to be made thereon; to be levied and gathered for the closure and supportation of the walls of the city, &c. (except always the church of York, archbishop, dean and chapter of the same,) with all profits, privileges, &c.

Rich. II. That the mayor and aldermen, and also the recorder of the city for the time being, four, three, or two of them, of whom the mayor and recorder always should be two, for ever be justices, to oversee and keep the waters and great rivers of Ouse, Humber, Wharfe, Derwent, Aine, and Dunn, as well within the county of York and Lincoln as in the county of the city of York, &c.

The king further granted to the mayor and citizens, or mayor and commonalty, of the city of York, and their successors, that they should hold two fairs or markets yearly at the city, &c.

Ipswich.
1378. The king, in this year, confirmed the former charters to the burgesses of *Ipswich*, as they had heretofore used and enjoyed them.*

And by charter granted in substance as follows:—

That his subjects of Ipswich had besought him, that they and their predecessors, by virtue of their charters and confirmation, from the time of the making thereof, have always had the cognizance of all pleas concerning lands, tenements, and rents, as well by writ of assise as by other writs; and cognizance of pleas, trespasses, debts, compacts, contracts, covenants of assise, fresh force, and other pleas whatever arising in the town; that dissensions had arisen among the burgesses; and justice had also been retarded, because such cognizance had not been granted with certainty to some officers of the town; and praying that the king would be graciously pleased to grant such cognizance to the bailives of the town who should annually be chosen by the burgesses.

The king then grants, with the assent of his council, and for 40s., which the burgesses should pay to him in the hanaper of his chancery, that the bailives of the town annually chosen, and to be chosen by the burgesses of the same for the time being, might have and take cognizance of all manner of pleas concerning lands, tenements, and rents, as well by writs of assise as by the other writs of him and his heirs; and also cognizance of pleas concerning trespasses, debts, compacts, contracts, covenants of assise, fresh force,

* Rot. Cart. 2 Rich. II. n. 2.

and all other pleas whatsoever arising within the town, as Rich. II.
 fully and wholly as the burgesses by virtue of their charters Ipswich.
 and confirmations have always hitherto had.

And in the third year of his reign, Richard II. again confirmed the charters to Ipswich.*

There is also a charter of this date to *Huntingdon*, wherein Hunting-
don.
 those of King John and Edward III. are recited and confirmed at the request of the burgesses of Huntingdon, for a fine paid by them. This charter also grants certain other liberties and customs. That they should have the return and execution of all the king's writs; and of the summons of the Exchequer, concerning all things arising within the borough, so that no sheriff, bailiff, nor minister, should enter into that liberty to execute such process, but in defect of the bailiffs; and that the burgesses should answer at the Exchequer.

That they should have a gaol for all such as should be arrested within that liberty for felony, trespasses, and all other offences; to be kept by those whom the burgesses should cause to be deputed.

That the burgesses and their successors, and their heirs, *burgesses of the borough*, should for ever be quit of toll, murage, pontage, &c.

This passage shows, that neither birth nor inheritance made a burgess; but that the heir of a burgess, must also himself become a burgess, before he was entitled to the privileges of the borough.

This charter further granted, that the burgesses should have the cognizance of all pleas by their bailiffs or their deputies there; as well of all lands, tenements and rents, being within the same town, as of trespasses, covenants, contracts and complaints, arising or done there, by all tenants or residents within the same town.

That they should not be put with foreigners upon juries, assises, or inquisitions, which, by reason of foreign pleas or business, should happen before the king's justices, so long as they *dwell* within the borough. Nor should foreigners

* Rot. Cart. 3 Rich. II. n. 10.

Rich. II. be put with the burgesses upon the like juries or inquisitions,
 Hunting- which, by reason of the lands and tenements, or of the
 don. causes of actions arising there, should happen. Nor should they be convicted of any pleas arising there by foreigners, but only by the burgesses, unless the matter concern the king or the *commonalty** of that borough. And this without the let or hindrance of the king, or his heirs or successors, or their justices, sheriffs or other ministers.

That strangers coming with their grain and other merchandise to the town, had, for carrying on their trade, hired houses, there to lay up their grain and merchandise, and had paid a custom called *Garnerage*;† that the strangers who hired such houses, seeing the town so wasted, and void of inhabitants, did deny to pay the custom; and the king being willing to provide for the peace and quiet of the burgesses, granted and confirmed that the burgesses there *dwell-ing*, should have and receive the custom called *Garnerage*, of all strangers who should have and hold such houses in the town; and should compel them, as often as there should be need, to pay the custom for ever, as before that time they were wont to do:—and therefore did command, that the burgesses and their successors, should have and hold their liberties and immunities for ever.

The provision in this charter expressly limiting the exemptions from juries to the burgesses, as long as they *dwell* in the borough, shows that the object was to confine the privileges to the *inhabitants*. But it may be said, that the import of this very passage is, that the burgesses might dwell without the borough. However, it must be recollected, that although a burgess should leave his borough, and live in another, he would still, for a year and a day, continue a suitor at the

* The word in the original is “*communitas*,” from which some might infer, that this place was then incorporated; but, in fact, the word, “*communitas*,” was, at the time of this charter, as we have abundantly shown before, frequently applied to the *inhabitants* of a place, though not incorporated; and the other circumstances of this borough at this time, as well as long subsequent to this period, will clearly show that it was not then a corporate place.

† Dr. Brady contends, that the burgesses were merchants—here persons trading with their merchandise at Huntingdon, and hiring houses for their merchandises, &c., were not burgesses, but were called *strangers*.

court leet of the place he had left; and it might be during this interval that the passage introduced in the charter was intended to exclude him from the privilege contained in that clause—and reasonably and properly so—because if he were so residing in another place, where there should be a deficiency of burgesses, or, if in the county at large, of suitors, to make a jury, the steward of the court leet, or the sheriff in the tourn, would be entitled, by the common law, to put such a person on the jury, although he was not a burgess or a suitor there. That being the general law, it would have been incongruous to have made the provision of this charter interfere unnecessarily with it; particularly as the foreign steward or sheriff would not be privy to this charter; and the party leaving the borough at his own will could have no reason to complain of losing by his absence any of the privileges enjoyed whilst he was within the borough.

Rich. II.
Hunting-
don.

In the fifth year of Richard II., there is also a patent to the escheator, to deliver up to the *burgesses* of Huntingdon, goods and chattels seized by them under their charters, and claimed by the escheator on the part of the king.

1381.

And in the same year, a patent granting paviage and pittance to the *good men* of the borough.

A charter of this date recites, that,* considering the laudable behaviour of the *burgesses* of Huntingdon to his majesty and the nation in the last insurrection, in the courageous and valiant resisting and encountering the rebels there coming, who would have run through the whole kingdom, the king being therefore willing to extend his favour more particularly to them, did grant and confirm, that although the burgesses or their ancestors had not hitherto so fully used their liberties and privileges as in their charters were contained, yet, notwithstanding, for the future they should entirely use and enjoy them without the hindrance of the king or any of his officers, &c.:—

1382.

The king, also, by a charter of this date, of his special grace, to the honour of “God, and of St. Thomas the glorious

Canterbury
1379.

* Rot. Cart. 5 Rich. II. n. 22.

Rich. II. "martyr, enshrined in the metropolitan church of Canterbury
 Canterbury "bury; and for this, that the body of his father was buried
 "in the same church; and also at the request of his
 "mother; granted, that all and singular the former charters,
 "customs and confirmations, should be ratified and confirmed
 "to the bailiffs and citizens of the city of Canterbury and
 "their *heirs*, &c."

The king then granted, that although the bailiffs and citizens of the city, and their predecessors, had not fully used the liberties, customs, and quittances, or any of them, in any case hitherto, nevertheless, they and their heirs and successors, might and should thereafter fully enjoy and use the same, without the let or impediment of the king, his justices, escheators, sheriffs, coroners, or other bailiffs or ministers whomsoever.

1385. And upon the Parliament Rolls it is stated, that the bailiffs and citizens of *Canterbury* have granted to them for murage, power to tax all rents and farms of houses being in the city, as well *foreigners* as *denizens*, and men of the holy church, for their rents, houses, and places in the same city.

This charges the ecclesiastics in the same manner as we shall find them charged in Melcombe.

Beverley. 1385. The king, by a charter of this date,* recites, that from defect of good government, many injuries, evils and dangers had arisen between the *inhabitants* and *commons* in the town of *Beverley*, on account of the neglect of the ancient and approved custom used there for many years, that *twelve men* of the town should annually be elected on the Feast of St. Mark the Evangelist, by the *common assent* of the burgesses in the guildhall, to rule and govern the town; but that this custom being destroyed, and instead of the 12 men, an alderman and two chamberlains had been elected to govern the place:—the king, for the better governance thereof, and for the remedying of these defects, commands the burgesses, by the faith and allegiance which they owe to him, that assembling according to the custom at the guildhall, at the Feast of St. Mark the Evangelist, by common assent, considering and thoroughly

* Rot. Cart. 3 Ric. II. n. 11. 1 Pet. MS. 85 B.

understanding these premises, and ceasing all strifes and contentions, they should preserve the peace and the good government of the town, in the manner as had been accustomed; under the peril of otherwise losing their privileges and liberties. Rich. II.
Beverley.

In this document we see the government of the borough by the *jury* of the *leet*, to which we have before so frequently alluded, distinctly recognized:—the evils arising from its discontinuance pointed out:—and directed to be remedied by its restoration.

The *men* of *Andover* were charged with 80*l.* for the fee-farm of their town; and 20*l.* of increment, and 200*l.* for the past years.* Andover.
1378.

And in the 14th year there is a grant of the manor at fee-farm, with the hundred.† 1391.

The citizens of *Worcester* received a confirmation of their previous charters,‡ with the additional privileges of taking all deodands and fines within the city; and power to hold all real and personal pleas, &c., before their bailiffs. Worcester.
1395.

COLCHESTER.

From the ancient constitutions for the borough of *Colchester*, made in this reign, and still extant in the original Norman French, some inferences may be drawn to illustrate our present subject of inquiry. It has been already shown, from the earliest charters down to the close of the reign of the three Edwards, that the persons to whom the respective charters were granted, must have been the “INHABITANTS.” 1377.

From the ordinances now referred to, it appears that the profits of the town were to be received by two persons, who were to be elected by *twenty-four of the town*. In order to form which body, four persons were to be elected; one out of each ward,§ by the *advice* of the *whole commonalty*—which latter term, from the documents previously adduced, as well as from the obvious reason of the thing, must mean the “whole inhabitants.” The four persons so appointed

* Mag. Rot. 2 Ric. II.; Southamptonshire, m. 2 A.; Mad. Fir. Bur., p. 9, note C.

† Pet. MS. In. Temp. Lib. ‡ Rot. Cart. 18 Rich. II. n. 4. § So London.

Rich. II. were to elect to themselves 20 more of the best and most
 Colchester sufficient *commoners*;—which term also, for the same reason,
 would apply to the *inhabitants*. The two receivers are
 directed to deliver the profits of the town in the presence of
 the whole commonalty, (“*en presence de tote la commune.*”) Over
 which last four words is written in a later hand, “*les*
aldermen.”* By which interpolation, it is obvious, that it
 was intended a colour should be given to the interposition of
 the aldermen, to the exclusion of the commonalty; as in
 Beverley, where the alderman and chamberlains were sub-
 stituted for the jury at the court leet.

Another similar alteration occurs in a subsequent part of
 the same constitutions, with a view of giving a justification
 to the interference of the *common council*; to the exclusion
 of the commonalty,—for the original constitution is, that the
 profits of the town should be put into the common chest, for
 the expences proper for the town, “by the advice of the whole
 commonalty,” (“*p'lavis de tote la comune;*”) over which
 latter words, are written in a later hand, “*la counseyl de la*
ville.”

In another clause, 16 persons are directed to be elected
 out of the most wise of those who have most in the town;
 the names of whom shall be enrolled in the courts; and these,
 with the bailiffs and auditors, are to be the *council* of the
 borough. And it is provided, that all the burgesses *resident*,
 and all those to be made in time to come, shall be sworn to
 obey the ordinances made by the council.

From these constitutions, the intelligent reader will be en-
 abled to form a tolerably correct view of the object, nature,
 and application of the local municipal government of the
 place, and the privileges that had been granted. All of
 which appear to have had but one object, viz., the peace and
 security of the borough,—the proper application of the com-
 mon stock belonging to it;—and that, as well the administra-
 tion of that fund, as the government of the town, should be
 effected by the social union of all within it.

* It seems that there were no aldermen till after the constitutions, in the time of Henry IV.

Henry III. having granted a charter to the burgesses of *Rich. 11.*
Colchester, confirming that of Richard I., with a special con- *Colchester.*
 firmation of the clause relating to the pledges for the debts of
 others; and also having given the burgesses the return of
 writs;—in the succeeding reign of Edward I., when the bo-
 roughs were called upon to return members to Parliament,
 the sheriff sent, in the ordinary course, a precept to Colchester
 for that purpose. In the 23rd of Edward I., two mem-
 bers were returned, “pro communitate burgi;” and similar
 returns were continued in the reigns of Edward II. and III.,
 and in this reign of Richard II.; who, in his sixth year,
 made a grant to the burgesses of the town of Colchester,
 towards the relief of the expences they had incurred in
 walling their town—that they might be exonerated from send-
 ing their comburgenses to Parliament:—thereby strongly indi-
 cating that the *inhabitants* were the burgesses. Nevertheless,
 they continued to return members, as if this grant had not
 been made.

The king, by a charter of this date, recites, that he had *Coventry.*
 lately granted to the mayor, bailiffs, and commonalty of *1388.*
 the town of *Coventry*, that when any of them should thence-
 forth be elected and created mayor of the town of Coventry,
 the same mayor should personally take the accustomed oath
 of office before the king’s coroner of the town, in the pre-
 sence of the *commonalty*.

The abbot of *Shaftesbury* petitioned the king, amongst *Shaftes-*
 other things, that no escheator should interfere there, which *bury.*
 was allowed. *1381.*

The king also granted the farm of the toll of the town,
 which, in the 8th year of the last reign, was held by Richard
 Scannell, to the abbess: and confirmed the grant of the
 37th of Henry III.

CONFIRMATIONS.

Besides the foregoing charters, many *confirmations* also
 occur in this reign—as to,

Carlisle—the town having been burnt; and 1,500 houses *1390.*
 destroyed there.

Rich. II. *Saltash*—made also a free borough.

1381. *Doncaster*—confirming the charter of Richard I.

1385. *Plympton* also:—and *Gloucester*.

1393. *Hindon*—confirming the charter of Henry III., and freeing the *inhabitants* from all tolls.

1383. A writ for the repair of the bridge in the borough of *Marlow*, in Buckinghamshire, of this date, is directed to the bailiffs and *good men* of Marlow:—"Ballivis et probis hominibus." And there are writs in the same form in the 1st and 6th of Henry IV.

Sandwich. In this year we find a writ from the king, directed to
1385. the constable of the castle of Dover and warden of the Cinque Ports, or his lieutenant; which commences with a recital, that, understanding the town of *Sandwich*, by divers pestilences and other grievous damages and misfortunes, which to the town had repeatedly happened, was so exhausted and weakened that the *inhabitants* were not able to defend the same, and could not perfect the fortifications which, both in walls and ditches, they had begun, at great expences, unless they were otherwise aided. The king then commands, that the constable should call before him those *persons* who own any ground not built upon in places exposed to danger in the same town, or within the liberty thereof; in order to direct them that it should be sufficiently built upon and fortified before the 1st day of May next. And if the owners of such ground, having been sufficiently warned, should not come before him, or perform the premises; or should expressly refuse to do so; then the king, by advice of his council, granted licence to his beloved the *mayor, good men and commonalty* of the town aforesaid, at their special request, that such ground of all those who will not, or should refuse to perform the premises for avoiding the dangers aforesaid, and for the greater fortification of the same town, they, at the proper costs of the same *mayor, good men, and commonalty*, might build upon and reasonably fortify; and such ground so built upon might hold; and the rents and profits thereof receive freely, without any impediment; until they should be satisfied, for the

costs reasonably applied by them, upon the building on, and fortification of, the ground. Rich. II.

This king also confirmed the charters of Sandwich, as may be seen by an *inspeximus* of the 3d of June, 10 Henry VI. Sandwich.

The *prior and convent of St. Deonis* at Portswood, who were the lords of Portswood, came to an agreement with the *commonalty* of *Southampton*, that the *inhabitants* of Portswood should attend the court leet at Cut Thorne; and that of the fines and agreements there made by the *inhabitants* of Portswood, the prior and convent should have two-third parts, and the mayor, &c. one-third: and of felons, goods, and forfeitures, happening in Portswood, the mayor, &c. should have two-thirds, and the prior and convent one-third. The agreement also directed that Portswood should be rated for the king's supplies with the town of Southampton; and that their proportion should be for every fifteenth, 1*l.* 6*s.* 8*d.* to be collected by the *aldermen* of Portswood: and the said prior and convent quitted claim to a certain rent of 40*s.* a year due from the town of Southampton; of which 32*s.* 2*d.* was for the lepers in the hospital of Southampton, and 8*s.* 2*d.* to be paid from the lands of Southwyk near Portswood. Southampton.
1396.

By an ordinance made by certain burgesses of the town of *Stafford*, sworn in the great court, (no doubt the jury at the court leet,) with all the *commonalty* of the same town, reciting, that the *bailiffs* of the aforesaid town of Stafford, all and singular the profits from waifs and strays, and forfeitures, in right of their office have had, so that no profit to the *common utility* of the aforesaid town came; directs, that no bailiff presume to take such profits; but whatever the bailiffs aforesaid, or either of them, may receive of those things thereof in their account, they shall faithfully enter. Stafford.
1399.

CORNWALL.

Cornwall being, as we have observed before, a county peculiarly circumstanced; particularly with reference to its boroughs; we add a few documents relative to one or two

Rich. II. of its towns; including *Grampound*; although long since disfranchised; as it serves to illustrate some of the privileges enjoyed by a Cornish borough at this period.

Grampound.
1378.

The charter to Grampound, in the first year of this reign,* grants to the burgesses certain lands near the ditch of the town; and also certain mills, with their tolls; that they might have *view of frank-pledge*, with all pleas within the borough; that they might be free of toll; that they might have a guild merchant; that they might hold all pleas in the borough, except pleas of the crown and land; *before* the reeve of the borough; that no foreign bailiff should make any summons, attachments, or executions within the borough; that the hundred of *Bondeostire* should be always held in the same borough; that it might be a free borough; and that the said lands and mills may also be free—rendering an annual fee-farm for the same.

Liskeard. There was also an inquisition taken at *Liskeard*, in the 22nd year of Richard II., before the commissioners of the king, upon the oath of 12 persons; who said, that the prior, canon, clerk, and several others, of Launceston, came in a warlike way in the night, to the town of Liskeard, and there took away Henry Frend, the vicar of Liskeard, who was arrested per decennum of the manor of Liskeard, to answer many of the tenants of that manor, in divers fines levied upon him, according to the custom of the county of Cornwall, “ac arestationem decenni pradioti fregerunt,”—and took away a book and two towels of the goods of the parishioners of Liskeard;—and other charges were made against the prior; and amongst them, that he had acquired lands without the license of the king;—and a writ is added, to distrain the prior to render an account of the profits of the lands he had acquired without license;—and further proceedings were had therein.†

Truro.
1377.

Richard II. remitted to the burgesses of *Truro*,‡ a part of the tenth and fifteenth—the collectors of those subsidies having suggested to the king, that they were unable to levy

* Rot. Pat. p. 6. m. 7. 1 Pet. MS. 314. † Mad. Fir. Bur. 112. H.

‡ Rot. Pat. p. 6, m. 38.

the sum assessed upon the town, on account of the poverty and want of the burgesses; and it being found by divers inquisitions, that the town had been greatly impoverished from various causes, and a great part thereof *uninhabited*, that many of the *men* had withdrawn themselves therefrom, and that the few remaining now inhabiting the said town, were quite incompetent to pay the sum annually assessed upon it; the king grants to the same burgesses for ten years, that they shall be charged only 50s. for every tenth. Rich. II.

The tenth and fifteenth were to be collected from the *inhabitants*, and this document states, that they could not be collected upon account of the poverty of the *burgesses*—from which it is apparent, that the inhabitants were the burgesses. This inference is supported by the rest of the document, which speaks of the impoverished and *uninhabited* state of the town—many having withdrawn from it, and the *few remaining now inhabiting* being unable to pay—which is immediately followed by the king granting to the *same burgesses* (that is to say, the few remaining inhabitants), that they should for the next 10 years, pay only 50s. for every tenth.

YARMOUTH ROLLS.

We have already seen the burgesses of Yarmouth mentioned in Domesday, and also privileges granted to that borough, in the reigns of Henry II., John, Henry III., Edward I., and Edward III.; which in substance, resemble those of all the other boroughs.

The privileges given and confirmed by the above charters—and which, from documents among the Harleian MSS.,* we find were confirmed in the 10th year of this reign, upon condition, that *all strangers* should have free liberty to buy, sell, and carry away during the fair—were granted to the burgesses; but they do not define the class of persons, who were to be the burgesses. 1386.

There are, however, original rolls in existence, in the possession of Mr. Dawson Turner, of this date, which describe 1379.

* Harl. MSS., 21, pp. 133, 168.

Rich. II. the proceedings at that period, in the public courts of the borough—in what manner the inhabitants, beyond a certain age, were *presented and sworn* at the *leets* of the borough—what were the privileges the burgesses enjoyed—and how *foreigners*, and *persons not sworn burgesses*, were excluded from participation in the benefits of the place.

1292. These documents begin in the 21st year of Edward I. —The first contains only the pleas of complaints and transgressions, and nothing worthy of observation as to the subject of our present inquiry, excepting, that the court was held before the four bailiffs of the borough, and the bailiffs of the several Cinque Ports.

1379. In this year, the *leets* of the borough are first mentioned.
Leets. It appears that there were four leets for the four divisions of the town,—which, probably, was the origin of there being four bailiffs—one of them presiding over each of the divisions of the town in which the leets were held: those divisions were, the north leet—the north middle leet—the south leet—and the south middle leet; separating the town into two divisions of north and south, and each of those into a subdivision of the middle leet; making together the four.

It is not inconsistent, either with the general law or the usage of other places, that there should be several leets in the same district; because the division of the leet depended upon the number of the residents within its district—and it would seem, that when they were too numerous for one leet, a subdivision took place:—thus Fitzherbert says,* “that there were many leets in the hundred.” We have previously seen, that in London there were many wardmotes, which are in fact the same; and many other places present, at this period, an equally striking uniformity in the regulation of their municipal police.

At Yarmouth, the division was not, properly speaking, into so many leets; but the same leet was held in different parts of the town, upon different days, for the local convenience of the inhabitants—because they were held under the authority of the same mayor, and before all the four bailiffs, and not

* Fitzherbert, fol. 117.

by each bailiff separately ; therefore it is apparent that these separate courts were part of the same leet, and held at different times and places, for the ease and convenience of the people. Rich. II.

The rolls of each leet contain the names of 12 persons, who are called in the margin the capital pledges, being no doubt the jury—whose province it was, to present to the court every free inhabitant above the age of 12 years, in order that he might be sworn to his allegiance, and give pledges for his good conduct, and “to abide the law.”

These capital pledges, or juries, appointed for this purpose, were the origin, as we have had occasion to mention before, of the 12 and 24—or of the aldermen, capital burgesses, and the common councilmen.

The swearing the *inhabitants*, taking their *pledges*, and *enrolling* them amongst the *resiants*, was the mode by which they were made part of the decenna and tithing, and was the suit royal which they owed to the king at the court leet ; and being thus classed among the permanent inhabitants of the place, they were entitled to the privileges of it, and, at the same time, bound to bear and perform all those burdens and duties, personal and pecuniary, belonging to permanent, responsible residence, called from the earliest periods of our history, “scot and lot.”

These duties commenced, by their being *sworn* to their allegiance after the age of 12 years ; and those of that age, who had not been duly sworn and enrolled in the decenna, were in mercy, and fined for their defaults.

Other persons were also presented by the capital pledges, or jury, as having bought and sold in the town as burgesses, when they were not so—and therefore they also were in mercy, and fined accordingly.

These persons would be individuals not belonging to the borough, not being resident there, and therefore not liable to be presented, like the former, for being above 12 years of age, and not sworn and enrolled in the decenna ; because being inhabitants of other places, where they would have been sworn and enrolled, or have been presented, and fined, they

Rich. II. had come to Yarmouth, and there bought and sold, as if they had been burgesses of that borough.

In the same manner, the jury also present and fine a woman; because she claimed to be of the liberty of Yarmouth, and was not a burgess. From which it appears plainly, that she was not then an inhabitant of the place, but claimed to be of the liberty, or belonging to the liberty of the town, as having been *born* and previously *enrolled* there as a *resiant*—in which sense, and that only, could she be said to be, or not to be, a burgess. Because a woman was not bound by the law to be sworn; nor could she be enrolled as a burgess; for she was incapable of performing all the personal duties of that station;—but if she had been a permanent inhabitant of the place, she was, in that sense, of, or belonging to the liberty; and was entitled to share in some of the privileges, as buying, selling, and trading there.

The following are a few of the entries, from which, as specimens, the reader may learn their general form and import:—

“The North *Leet*, then holden upon Monday next after “the Feast of St. Barnabas, in the third year of the reign “of King Richard II., from the conquest,” (four names, described as bailiffs, then follow.)

Capital
Pledges.

Twelve names are then entered as *capital pledges*, who, upon their *oaths*, *present*, that 15 persons (whose names are given,) exceed the age of 12 years, and are not in decenna; therefore they are in mercy.

North
Middle
Leet.

“The North Middle *Leet*, holden on Wednesday next “after the Feast of St. Barnabas.”

Capital
Pledges.

The *capital pledges* are entered in the same manner as in the North Leet; and they *present* 77 persons, in the same manner as in that leet. They also present, upon their oaths, nine persons, who had bought and sold as burgesses, and were not—therefore they are in mercy.

Henry Glover is presented for forestalling,* and they state, that he calls himself, “advocat se,” of the liberty of Yarmouth, and is not a burgess—therefore he is in mercy.

* See Custumal of the Cinque Ports.

“South Middle *Leet*.”—*Capital pledges* as before ; and they *present* 161 in the same manner. Rich. II.

“South *Leet*.”—*Capital pledges* as before ; and they *present* 147 for the same cause.

South
Middle
Leet.
South
Leet.
1384.

In the eighth year of Richard II., similar entries occur for each of the four *leets*, in the same succession ; but in some instances, the fines placed opposite the names are erased, and sometimes there is inserted “*quia in leta*.”

Meaning doubtless, either that the party was discovered to have been previously sworn and enrolled at the leet : or that he had submitted subsequently to the imposition of the fine, and had duly done his suit by being entered in the decenna.

The same again occurs in the 22nd of Richard II., and in precisely the same form.

1398.

We have previously observed, that there were many persons residing in every place who would not be received in decenna, as ecclesiastics—women—villains—and infamous persons.—So also there would be some who would be excluded on other grounds ;—as for dangerous and infectious diseases. Thus, we find in these rolls one is presented as a leper, and inhabiting in the town ; but he is not charged with a fine for not being in decenna.

Another is presented that “he holds apprentices, and is not a burgess.”

The ground of this presentment is, that the burgesses might be made liable, in the manner we shall see referred to upon the Parliament Rolls of this reign, for the act of any person in the town, taking as apprentice the villain of any lord ; which, if the person himself was not a freeman, he was clearly not entitled to do ;—on the other hand, if he was a freeman, he ought to be in the decenna,—and therefore either on the one ground or the other, the burgesses were entitled to call him in question. The jury, therefore, properly present him for taking apprentices, not being a burgess. If, however, he should come in as a freeman, and do his suit by being put in decenna, then he would not be fined, but be entered as before, “*quia est in leta* ;” and would, consequently, be a burgess.

9

Rich. 11.

From hence therefore, it is placed beyond all controversy, (as is also to be seen in the case of Stockbridge,) that neither the taking of apprentices, nor the being a burgess, had at Yarmouth any connexion with the corporation; but was in fact founded upon the common law, as administered in the court leet.

Four persons are presented as “merchandising in the town, not being burgesses.”

These have a fine imposed upon them, because they had been guilty of a misfeasance by trading in the town without being entitled to do so. But the person who had taken the apprentices was not fined, because his situation was capable of being explained, as,—by showing that he was not a freeman, and therefore not bound to come to the leet. But the merchants must have been freemen, because otherwise they could not have traded. And trading in the place, and therefore resiant, they ought to have come to the leet, and been enrolled there as burgesses. On the other hand, the master of the apprentices might have been a freeman, belonging to another place, not having resided at Yarmouth a sufficient time to be a burgess there. As a freeman he might have been entitled to have the apprentices, but they would acquire no local rights at Yarmouth by serving under him: the burgesses of Yarmouth not being bound to take notice of his contracts, unless he was a freeman and burgess of that place.

The same person who was presented as a leper *inhabiting* within the town, in the south middle leet, is also presented in the south leet as “*dwelling* in the town:” and it is added, “he ought to be put out.”

In the north leet the same entries occur:—and of three persons for having apprentices: and one person as *commorant with another*, and merchandising.

Inmates.

It will be remembered that *inmates* were not bound to attend at the leet, because their hosts were liable for them; and therefore this person was not bound to do his suit there, nor would he be enrolled as a burgess: but the fact of being

commorant, and merchandising, ought nevertheless to be Rich. II. presented by the jury.

Others are presented as "merchandising in the town, and are not burgesses:" but are returned as "proper to be burgesses."

A decisive proof that it was the duty of the jury on their oaths, to present of the free inhabitant householders paying scot and lot, only such as in their sound discretion and conscience, they believed to be fit and entitled to be burgesses;—not selecting them according to whim—caprice—interest—favour—or affection,—but honestly, according to the fact of their fitness and their title; the only reasonable, sound, and constitutional basis, upon which the qualification ought, according to the principles and pure practice of our law, to be still placed.

It must always be borne in mind, that notwithstanding the particularity of these rolls, there is no mode by which the burgess is pointed out; except by the fact of his being first stated not to be in decenna, and its being subsequently added, "*quia est in leta*."

A person is presented for "taking away the stones of a wall belonging to the *commonalty*"—that *commonalty* being, as these records establish, the *free inhabitant householders*, sworn and enrolled at the leet, paying scot and bearing lot:—a part of the scot being the contribution to the making and repairing of those walls, the stones of which had been taken away.

It cannot escape observation, that these entries entirely correspond with the common law, as shown from the quotations previously made from Bracton, Britton, Fleta, the Mirror, and the Year Books; and that they confirm, in a striking manner, by the evidence of actual practice, the view before taken of the municipal government, and the internal economy of the towns, in the early periods of our history.

LYNN.

The records in this reign relative to *Lynn*, are very important. The first that presents itself, is a petition upon the 1379

Rich. II. Parliament Rolls, which states, that "the mayor and *burgesses of Lynn*, and their progenitors, having had the charge
 "of the town against enemies, and for the further preservation of it, pray that the *men of the town* (gentz) be not
 "arrayed out of it, but that they should be arrayed before
 "the said *mayor*, and *other good men* of the town."

The men
of the town

The good
men of the
town.

Here it is clear, that the burgesses of Lynn, are described by the terms to which we have before so frequently adverted, of "the men of the town," and "the good men of the town."

The return to Parliament of this date, of the burgesses for Lynn, appears in the corporation books, in this form:—

1378.
Common-
alty.

"On the same day, the mayor and *commonalty* caused to be chosen, two discreet men—viz., Nicholas de Luerdeston and Hugh de Ellyngham—to be present in the Parliament of our lord the king; to be held at Gloucester, on Wednesday next after the Feast of Saint Luke the Evangelist, by virtue of a writ on that account directed to the aforesaid mayor and commonalty, by John Locke," &c.—The names of 11 other persons then occur, and who are stated to have been *sworn*. These persons, no doubt, composed the leet

Jury.

In another manuscript book, in the possession of the corporation, is preserved the will of John de Spaldyng, burgess; who among other things, bequeaths to the community of Lynn, *4l.*, to *abridge the tax of the poor* of Lynn.

Poor rate. This establishes, that a tax was at that time levied for the support of the poor, although it was not, as since the statute of Elizabeth, assessed upon the parishes, but upon the towns, hundreds, and tithings, according to the common law division of the country.

Freedom. There is also another entry:—That "William Bandesdale, of Scarborough, *entered into the freedom of the town* of Lynn, on Tuesday next before the Feast of Saint —* the Virgin, in the year of the reign of the king aforesaid, and made the fine for his entrance, and is sworn." And he found "*pledges* as well for his good conduct, as for the payment of the said fine."

* The name is effaced in the original.

These entries of persons not natives of Lynn acquiring the *liberties of the town*, are frequent; but not so much so as those acquiring it by *servitude*, which are very numerous in the Red Register. The former seem to have obtained the freedom in consequence of their coming to *reside* at Lynn— for the expression, that “he entered into the freedom of the town,” appears to import, that he came to reside within the liberties; local residence being at that time the legal and reasonable qualification for all duties and privileges, and therefore being universal, would not be mentioned—which accounts for the general silence of the ancient records, upon the subject of residence.

Rich. 11.

Servitude.

Residence

We have also in this entry, which we shall see confirmed by the extracts from the documents of Wells, an express instance of the pledges given in conformity with the law of the leet, upon the swearing and enrolling of the burgesses.

Pledges.

The following entries are likewise to be found in the corporation books:—

“On the aforesaid day were elected for the Parliament, to be held at Westminster, at the feast of St. Martin, John de Wentworth and Thomas Waterden, by Robert Kene” and 11 others, “*sworn*.”

These were the leet jury, who being in office, returned the members of Parliament, in the same manner as they would present any other officers, or functionaries, for the borough;—and in the next entry, they also appear to have chosen the coroner.

Jury.

“In the aforesaid day, William Erl is *elected* for coroner, in the place of Edmund Billegate, by the aforesaid jury-men.”

When in documents of this description, relative to the court leet, the word “*elected*” is used, we should be careful not to be misled by our modern notions of that term. Undoubtedly it was an election, in the pure sense of the word, because one person was elected, or selected, out of many; but it was not according to our modern notions of election—the jury deciding merely according to their fancies or inclina-

Election.

Rich. II. tions—but it was a selection by them, under the sanction of their oaths, with reference to the real fitness, proper time, and due succession or liability of the party; as for instance, the modern mode of pricking for sheriffs, by the judges, with the assistance of those who are best qualified to state the real situation of the parties, with reference to their fitness, and the propriety of their being appointed for that turn.

Appren-
tices,

“ It is ordered by the hall, that in future, no burgess shall receive any one into his *apprenticeship*, unless the same apprentice shall be of *free condition*, and *subject to no servitude of birth*; and whenever such apprentice shall be about to be received, the receiver shall come to the mayor at the guildhall, with the same apprentice, and his indenture, &c., and there the apprentice shall be examined by the mayor, in the presence, of other burgesses, whether he be of *free or similar condition*, and not a *nativus* from another place; and a paper or some other memorandum of the guildhall shall be enrolled, of the day, term, and year of the reception of the apprentice: for which enrolment, the clerk of the community shall have 4d. And if it shall happen, that such apprentice, after the completion of his term, shall be found of such condition of *nativity*, the term of his service shall not at all avail for his having the liberty of the town.”

Here we have the general doctrine relative to apprentices, which we have hitherto maintained, most strikingly illustrated by the particular instance occurring in this entry, relative to the borough of Lynn; and which also forcibly confirms the extracts we have before made, from the ancient records of Yarmouth.

Free con-
dition.

It is distinctly ordered, that no burgess shall receive any one as an apprentice, *unless he is of free condition*; for, upon the principles recognized in our own and the Scotch laws, no villain could be an apprentice. The material distinction is here also marked, between the servitude as an apprentice for the purpose of learning any science, art or craft, and the servitude of a villain.

Mayor.

This entry also discloses the ground upon which the mayor's

interference was necessary, which was not either with respect to trade, or any supposed corporate right, but simply for the purpose of taking care that the common law with reference to villainage and freedom, was duly regarded; and therefore the mayor was to examine him in the presence of the other burgesses—all of whom would be liable to the lord, if a fugitive or villain were received—whether the person proposed as an apprentice, was of free condition, and not a *nativus* from another place. Rich. 11.
Neif.

The concluding provision of this ordinance, that if it should eventually turn out that the apprentice was a native villain, his service was not to make him free, seems somewhat in derogation of the general law, that a residence for a year and a day without claim of the lord, should make a person free. But it should be considered, that such a fact operated against the lord only as a presumption of his having waived the villainage; and we have before seen that although the lord was not entitled by his own act to take back the villain, yet it seems very questionable whether he was not entitled by a writ de nativo de replegiando, to re-obtain possession of his villain; and therefore the real effect of this provision was—that by the public notice thus given by the mayor and burgesses of Lynn, through the medium of this ordinance, they had taken the precaution of declaring, that the service of a person as an apprentice should go for nothing, if it eventually appeared that he was a villain at the time of his apprenticeship; by which means, if the mayor and burgesses should have inadvertently admitted a villain, they would clearly stand without blame, and could by this evidence answer any demand of his lord, because they would have used due diligence themselves, and the fault, if any, would be attributable to his own laches.

As to the apprentice, he would have no reason to complain that his service was to go for nothing, because at the time of his entering into the apprenticeship, he had by means of this ordinance, full notice of what would be the effect of his being a villain; a fact that must have been within his own knowledge, and the consequence of suppressing which he ought

Rich. II. to bear himself, otherwise he would be allowed to take advantage of his own fraud.

As to the lord, he would have no substantial reason to complain for the temporary interruption of the servitude of his villain, for it would be attributable only to his own laches, and he would recover his villain again.

1586.
Freedom
by birth.

"On the aforesaid day, it is commanded by the mayor and community to be observed henceforth, that no *son* of a burgess, unless he be *born* in lawful marriage, and be gotten *after* the entrance of his father into his freedom, shall enter into the freedom of the town, unless he pays a fine to the community for his entrance, like a stranger."

This entry also confirms the general doctrine as to the right of freedom and burgess-ship:—if a villain had resided without claim for a year and a day in a privileged town or borough, without a claim from his lord, he was thereby free; but if he had any children before he so became free, they would still be villains.

If a borough treated as a freeman, any person so circumstanced, all his children born after he had been so received, were to the knowledge of the borough, free, and therefore they were bound to receive them as such; and, consequently, if they were resident householders within the borough, to swear and enrol them as burgesses. But as his children born before he was sworn as a burgess, might or might not be free, for the reasons we have previously stated, so they stood precisely in the same situation as any other strangers; and ought to give a fine, as a contribution to the common stock, and as a security to the borough, if he should be a fugitive villain, in which case the lord might prosecute the borough for receiving him. And therefore the children of the burgess, mentioned in this ordinance as not born in lawful marriage, were not to be admitted without paying the fine:—because though the father was free, they obtained through him, no proof of freedom. Those children also born before the father was received as a freeman, though born in wedlock, stood in the same predicament; and were likewise to pay a fine:—not that they were to be altogether excluded, if they had lived in the

place a year and a day, (for then they were both bound and entitled to be sworn and enrolled as burgesses,) but they were obliged to pay the fine, upon the reasonable and practical grounds before explained, of contribution and surety. Rich. II.

In the constablewick of Wentworth, Simon de Feltwell, (and there are eight other similar entries for other constablewicks,) is *sworn* "to make the *pledges* at the leet of this "year." 1394.
Capital
Pledges.

And from other entries it appears that there were then—as there are now—nine wards in Lynn.

At this time there are also other returns of members to Parliament, in these forms:—

"In the time of Thomas Conteshal were elected for the Parliament, to be held at Westminster the 15th of Hilary, Thomas Drew and Thomas Morton, by (then follow the names of 12 persons,) *sworn*." 1393.

"Election made for the Parliament by John Style," (and 11 others,) "*sworn*." And they choose for the aforesaid Parliament, "John de Grandon and Thomas de Waterden; and the aforesaid 12 *jurats* taxed the tax of this year in the "same day." 1395.

On the same day were elected, as collectors to assess the tenth, William de Hunderford, Edward Egmere, Thomas de Sparham, Richard de Fransham, by William de Bilsey, (and 11 others,) sworn to choose faithfully the said collectors.

The observations made on the former entries, are sufficiently explanatory of these.

It is impossible to quit these important documents from the borough of Lynn, without again reminding the reader, that the irresistible inference from them is,—first, negatively, that neither *apprenticeship*, the obtaining of freedom, nor the *admission of burgesses had any connexion with corporations or corporate principles*. And next, affirmatively, that they all had a direct connexion with the *common law*—were in practice transacted at the *leet*, and were altogether founded upon the law as administered in that court.

Rich. II.

WELLS.

- Leet. We have also in this reign, entries at the *leet* of the borough of *Wells*, which will serve further to illustrate our
- Pledges. general doctrine with respect to *pledges*, and the admission of burgesses. It will be observed that they are, as the proceedings in the leet ought to be, before the *steward*.

They are in the following form :—

Convocatio tent. die Jov. proximo post festum sancti Lucii Evangeliste.—An. Regis 1 Ric. II.

1377. Quo die Johannis Cowel, venit et dat seneschallo communitatis burghi Well. pro libertate ville Well. poculum et Xs. solvendos de fine in festis apostolorum Philippi, et Jacobi, et nativ. sancti Johannis per plegios finis Johannem Pestill et Philippum Cow.

Item, Johannes Grampston, goldsmith, eodem modo, venit et dat Xs. magistro communitatis pro libertate, ville Well. per plegios de fine Joh. Pestill et Mxm. Tevoer solvend. de fine in festis sancti Andree, et Philippi, et Jacobi.

- Mayor. Magistro seems to be the *mayor*, that is, the same officer who is called by the Saxons "*reeve*," and by the Normans, "*bailiff*," "*provost*," or "*maire*;" those names all meaning the king's head officer, in the place over which he presided, to collect for the king the fee-farm rents, and issues of the
- Steward. borough. The senescallus was the *steward*, whose duty it was to hold the king's court leet, and to be the judge there. This admission before him is in strict conformity with the common law.

From the word "*venit*" it appears that Cowel was present at the court; and considering the context, it may be inferred that he *resided* in the place.

The first fine is paid to the steward, and not, as subsequently, to the master and the commonalty. The fines are expressly paid for the liberty of the town.

By the general law of the land, as derived from the earliest Saxon institutions, every freeman coming to live within the jurisdiction of any leet, of which there was one in every borough, was bound to give pledges for his good behaviour.

In subsequent times, when pledges were found inconvenient, a larger fine was substituted. There seems also to have been an intermediate state, in which pledges were taken till the fine was paid. In another entry it appears that when the fine was paid, no pledges were given. Rich. II.

Although Grampston is mentioned as a goldsmith, Cowel, Drake, and many others have no such description, it cannot be inferred that it was in consequence of his trade that he was admitted.

The variety in the form of these admissions, is sufficient to show that the precise form is not to be regarded.

Another person *comes*, and gives to the master and commonalty of Wells, for having the liberty of the borough, 10s., 12 pairs of gloves, an ounce of wax, and a pint of wine, and binds himself to pay this fine upon two specified days, by two pledges.

Convoc. tent. die Jovis prox. ante fest. Sci. Petri ad vincul.

Quo die Willis Cornwaille venit et dat magro. et coitat. Well. ceram potu. et chiro. pro ingres. habend. in libtat. Well. et non plus quia filius burg.

Here the form of the admission is expressly for his entrance into the liberty.—How his being a *son* of a burgess affects the admission, we have recently explained in discussing the records of Lynn. Son.

Convoc. tent. die Jovis in festo Sancte Agathe. Quo die Johes. Kyng venit et dat magro. coitatis. Well. p. lib. hend. in burg. Well. potu. chiro. et Xs. noie. finis in festis Trintat. et Laurencii. Pleg. de fine R. Tworum et Joh. Clotheroc. 1383.

In this instance we have another form of admission, which is "for having the freedom,"—*pro libertate habendâ*.

Convoc. tent. &c.—Quo die Johes. Kene venit et dat mro. coitatis. pro lib. hend. in dic burgo potu. chiro. et ceram.

Convoc. tent. die Jovis prox. post Fes. Sci. Marie Magdalen, &c. 1384.

Quo die Hen. Maundewan Braysy, venit et dat magro. et coitati. Well. pro lib. hend. in eodem burg. potu. ceram chiro. et non plus quia disponst. Filiam Burgs.

Rich. II. This person, who had *married* a burgess's daughter, by
 Marriage. which, upon the principles we have explained before, he
 became free, is admitted without the payment of any fine as
 a security against his being claimed as a villain; but he
 gives the gloves, as a present to the mayor—the wine, as a
 present for the conviviality of the burgesses, probably with
 reference to the ancient *scotale*—and the wax, for the pur-
 pose of supplying the church with the candles necessary for
 the service of that period.

The next entry is nearly in the same form.

1387. Convoc. tent. die Jov. prox. post Fest. Circumcision.

Quo die Hen. Cardamakyne venit et dat magro. et coitati.
 Well. ceram chiro. et potu. et non plus qui disponst. Uxorem
 Burgs.

Of course, this means *viduam*—another instance of the
 inaccuracy of these entries in point of form; though they are
 no doubt correct in substance.

HYTHE.

We also find the following entry in this reign, in the cor-
 poration books of Hythe:*

“ John Brewer, of Hethe, came before the *jurats*, on the
 “ Sunday next after the Feast of St. John Portlatin, and
 “ became a *freeman*; and on that day was sworn to the
 “ town; and gave for his freedom, 3*s.* 4*d.*, and paid it the
 “ same day.”

PARLIAMENT ROLLS.

In addition to the documents we have already extracted
 relative to London from the Parliament Rolls, we also find in
 those repositories the following entries:—

Melcombe
 1379.

The first relates to *Melcombe*. The mayor and common-
 alty, or rather those who were formerly of the town, which
 had been lately destroyed, by the enemy suddenly landing
 there, so that no man was *residing* within the said town,
 pray that they may have granted to them, tonnage and
 murage, and other customs, as the men of Southampton;

* Book B. fol. 2 a.

and also that they might be released of their prisage of Rich. 11.
wines, and all other taxes, &c., as the citizens of London
were.*

The citizens of *Norwich* also state, in a petition, that, from
ancient times, no *stranger* of their franchise had power to sell
or buy any merchandise; and pray Parliament to confirm the
custom.

• They likewise recite in the petition, that a custom had ex-
isted for the citizens, upon default and mischief being com-
mitted, to make ordinances among themselves, as it appeared
to them, according to good faith and reason, for the common
profit of their town, of the citizens, and others coming, or
resident with them; but that recently, many of the com-
monalty had acted contrary to the best remedies and ordi-
nances. And for this, they prayed that it might be granted
to them and their successors, by charter, for greater and
more forcible authority towards the said citizens, and for
the better government of the town, that the *four bailiffs and*
24 citizens elected every year by the commonalty of the town,
or the greater part of them, should have power to make
and establish within the city, such ordinances and remedies,
for the good government of the town, and the citizens and
people there coming and *resident*, as should seem to them
best, &c., &c.—The prayer was granted.

Norwich.
1378.

Twenty-
four
citizens.

Again, the commons pray redress,† because the *sheriffs*
in their *tourns* had taken indictments of manslaughter, by
reason of which, the indicted had been taken and imprisoned
and put to great ransoms, and had no deliverance before
justices assigned to deliver the gaols; and some justices
held the opinion, that the sheriffs in their tourns had not
the power to take such indictments.

Tourn.
1377.

In answer to which, the counties of Northumberland,
Cumberland, and Westmoreland, were directed to do as they
had been accustomed; but elsewhere, the old law should
hold.

The *sheriff's tourns* are here expressly mentioned, as at
that time in full practice.

* Pet. Parl. m. 7, p. 70.

† Rot. Parl. n. 45, p. 21.

Rich. II. The next entry in these Rolls relates generally to “ the
 “ *commons of cities and boroughs* ; who being obliged, for the
 “ salvation of themselves and the kingdom, to keep their
 “ walls, &c. in reparation, at great expense, which they can-
 “ not henceforth maintain, without the assistance of those
 “ who have tenements, possessions, or rents, in such cities
 “ or boroughs, as well *religious* as others, who have never
 “ contributed to their sustenance, or maintenance hitherto,
 “ and therefore pray that they may do so in future : ” * and
 the same was allowed.

Ecclesiastics. Here we have a distinct recognition, that the *ecclesiastics*
 and their possessions had been exempted, till this time, from
 murage, as one of the temporal charges which fell upon the
 citizens and burgesses of the realm.

After this, follow many entries respecting *villains*, which
 we shall transcribe ; that the reader may learn to how great
 an extent that doctrine was at this period in use, and how
 important were its results.

A petition states, † that “ many *villains* and land tenants
 “ in villinage, who owed custom and service to their lords
 “ within their lordships, had, by the procurement of certain
 “ persons, purchased, in the court of the king, exemplifi-
 “ cations of the Book of Domesday, of manors and towns
 “ within which the said villains and land tenants were re-
 “ siding ; by colour of which exemplifications, and the bad
 “ understanding and interpretation of them, made by certain
 “ persons, they had withdrawn their customs and services
 “ from their lords, &c., &c.” A commission was ordered, to
 inquire why they refused their services.

It will be observed, that the liabilities of the *villains* to do
 their services, are here connected with their *residence*.

1381. Another entry states, ‡ that “ in consequence of certain
 “ disturbances in the kingdom, the king was constrained to
 Neifs. “ grant his letters patent to the *neifs* of his kingdoms and
 “ others, of liberty, franchise and manumission, well knowing
 “ he could not do it but against good faith and the law of

* Pet. Parl. n. 35, p. 20.

† Pet. Parl. n. 45, p. 21.

‡ Rot. Parl. n. 1, p. 99.

"the land: but that he thought it better to do it, in order to check their clamour and malice, as the king was not then in his right power. But that the moment he regained his power he had repealed his letters patent in that respect." The king desires Parliament to confirm his acts, which they do. Rich. 11.

The king further commands the chancellor to ascertain from the lords and commons, whether the grant which he had made of franchise and manumission to the neifs and villains of the land pleased them or not. The lords and commons unanimously answered, that the repeal was well done; but that such manumission or franchise of neifs could not be without their assent, who had the greater interest. That they did not assent; and humbly prayed, that as the manumissions and franchises had been granted by coercion, and to their disinheritance, and the destruction of the kingdom, they should be destroyed and annulled by the authority of Parliament.

Here the principle of law is expressly recognized, that villains could not be manumitted or enfranchised without the consent of their lords; hence the grant of a charter by the king, that the inhabitants of any place should be free burgesses, had not the effect of enfranchising the villain of any lord residing there—and therefore villains were not burgesses.

The *villains* having been guilty of insurrection in divers parts of the kingdom, their lords, to appease such mischief, had punished them according to their own judgment, without due process of law. Whereupon the lords and commons in Parliament indemnified them against any future proceedings therefrom.* Villains.

Many villains and neifs of great lords, &c. having fled into cities, towns, and enfranchised places, and there commenced divers suits against their lords, in order to be rendered free by the answer of their lords:—the commons therefore pray that the lords shall not be forebarred by reason of such answer in law.†

This petition discloses another principle with respect to

* Rot. Parl. m. 12, p. 100.

† Pet. Parl. m. 2, p. 212.

Rich. 11. villains; that if their lords answered them in any suit as if they were free, they were then in effect manumitted.

1391. The lords also complained, that their *villains* left them and their lands, and entered cities and boroughs that were enfranchised, the men of such cities and boroughs not permitting them to be disturbed, upon account of their franchises:—they therefore pray that they may be permitted to enter the said cities and boroughs, peaceably to retake them.

We have before seen that, by the common law, the lords might do this within a year and a day, but not afterwards; because the villains, after a residence for that period, would be bound to be sworn and enrolled at the court leet, and thereby became free.

The commons also prayed,* that no neif or villain of an archbishop, bishop, abbot, prior, &c. should purchase lands or tenements in fee, upon pain of forfeiture; because these purchases leave the hands of temporal men for those of spiritual men, to the great destruction of the lay fee of the kingdom. And that no neif or villain should place his children at school to prepare them for the church.

The knights of the shire in Parliament complain, (as the lords had done,)+ that there are many villains who fly from their lands into cities and boroughs enfranchised; the men of which places will not permit the lords to retake them, on account of their franchises:—they therefore pray that they may have liberty to enter and take away the villains, notwithstanding such liberties.

1393. It having been provided by statute, that no religious houses should purchase any lands or tenements, by which they would fall into mortmain, yet the religious houses, notwithstanding, having lately encroached upon many lands and free tenements, as well in other lordships as their own, by causing their villains to marry free women, who have free lands to descend to their sons or daughters, which lands and tenements they seized, contrary to the said statute, &c.:‡ it

* Pet. Parl. m. 2, p. 294.

† Pet. Parl. m. 1, p. 296.

‡ Pet. Parl. m. 3, p. 319.

was ordained, that the child of a free woman marrying a villain should be a bondman;—which ordinance is in conformity with the law before quoted from Glanville and Fleta. Rich. II.

The commons of the counties of Salop, Stafford, Worcester, Gloucester, and seven other counties,* complain that many men of the county of Chester come daily and nightly armed, and kill persons, burn houses, ravish women and maids, and wound other people, badly treat, and destroy their cattle, and injure their goods, &c.; and no punishment nor forfeiture is provided against them, upon account of their franchise. And they pray a remedy, and that it may extend to Durham, and other such franchises. 1384.
Franchises.

The commons pray, that no *livery* be granted under colour of any *guild*, fraternity, or other association; or such guilds and fraternities should lose their franchise.† 1389.
Liveries.

This corresponds with the tenor of the statutes of this reign, to which we have before referred, respecting *liveries*; and shows that the adoption of liveries by guilds and fraternities was a usurpation, and not sanctioned by law.

YEAR BOOKS.

There is a chasm in the Year Books at this period, and no cases of this reign are reported in those compilations.

A few are to be found in Jenkins, but they are not material to our subject. Some others are abridged by Bellewe, in his compilation of the cases of Richard II. from the abridgments of Statham, Fitzherbert and Brooke. As that work was published subsequently to Brooke's Abridgment, the author has taken, in a great degree, the running titles of his predecessor, and accordingly he has entered these cases under Brooke's title of "Corporations and Capacities:"—they are only three;—the first relating to the name of an abbot;—the second to the church of St. Andrew, in Holborn;—and the last to a bishop; in which the distinction is marked between his right to take by inheritance, and that of abbots and friars, who can only take in right of their church.

* Pet. Parl. n. 22, p. 201.

† Pet. Parl. m. 7, p. 266.

CHARTERS.

We have already quoted and extracted many charters relating to different places; and have mentioned others only by name; a considerable number have also been omitted; but before we quit the English documents of this period, it is proper to mention a circumstance which occurred in the reign of Richard II., as negating the presumption so often adopted for the purpose of supporting existing usages, "that a charter confirming them might have been granted in ancient times, though since lost."

In order to uphold what we find existing, and which we dignify with the name of "usage," though properly it should be termed usurpation, this doctrine of charters, "lost by time and accident," (to use the common legal phraseology,) has been received without scruple, or consideration of its nature, origin, or the real foundation upon which it rests.

It is however, comparatively speaking, a notion of modern date;—and in fact, a special pleading expedient, in defiance of history and truth. And a stronger proof of the unjustifiable nature of this assumption can hardly be found than in the contents of the following deed, which we have discovered in this reign.

John de Waltham, a great favourite of the king, was master of the rolls, and when he quitted his office, with great precision, delivered over all the records in his possession to his successor by an indenture, minutely specifying every document he had. And it is a circumstance worthy of observation, that every document entered by him in that list, is at this moment in existence. So that, if we consider this fact, as well as the minute particularity with which every former charter is specified by *inspeximus* in those succeeding, it seems in defiance of every probability and fair presumption, to assume that any of the charters have been lost; or that there ever were any in existence which are not now to be traced, either by the originals or *inspeximus*.

SCOTLAND.

Nothing occurs at this period material to insert for the purpose of further illustrating the history of the boroughs of Scotland; but they, as well as the boroughs of Ireland, continued in the same state in which they were before.

IRELAND.

This king confirmed, in the 18th year of his reign, the charter of Edward III. to *Dublin*; as well as those of Henry II. and of King John, with respect to the mears and bounds: and, that foreign merchants should, as in the city of London, be liable with the citizens, to the taxes and duties incumbent on the city. Also cognizance of pleas to the mayors and bailiffs, which was claimed in this reign, and allowed—and that the citizens might, as in England, be sued and sue in their city court. These, with other privileges, they are stated to have enjoyed from the Conquest. Dublin.
1395.

From the oath taken by the provost, in the 12th year of this reign, it appears that his duties were the same as those of the mayors in this country.

In the 7th year of his reign, the king also confirmed the liberties of *Kilkenny*, with a fair once a year. And that *four* Kilkenny
1393. *men of the town* should be elected *baron*, to hold the pleas of the fair before them in all personal actions within the bounds of the town. These and other privileges were to be enjoyed by the *commonalty of the town*. And that they so continued till the time of Henry VI., appears from a charter of that king, which provides, that all ordinances to affect him and his heirs should be made by the *common assent of all the commonalty*. And Richard III., as to the election of the provost, by charter directs, that the *commonalty* should, before Michaelmas, in every year, elect *four of the town* for the office of *provost*, and should present them to the lord of the town, or his attorney, who should accept two, one to serve for half a year, to Easter, and the other to serve for the other half year, from Easter to Michaelmas; neither of

Rich. II. them to depute any person in their place, unless by the assent of the superior and the *common assent of the town*.

Dundalk. 1379. Richard II. granted to the *burgesses of Dundalk** a charter, containing all the privileges usually enjoyed by the English boroughs:—that their town should be a free borough:—that the burgesses should have a mercatorial guild, with a hanse and other liberties, &c.:—that none who were not of that guild should merchandise within the borough, unless by the consent of the burgesses; and that they should have sok and sak, them, &c.:—that they should be released of tolls throughout all the ports of the sea, and the king's dominions:—that no person should plead without the hundred of the borough of Dundalk, except of pleas of foreign tenure; and that the burgesses should be released of murder within the bounds of the town:—that none of them should make duel of any appeal; and as to the pleas of the crown, they should be according to the custom of the city of Dublin:—that no one should take a guest by force of the marshal:—that they justly should have their lands, tenements, sureties and debts, &c. according to the custom of the borough of the city of Dublin:—that they might have ingress and egress into the borough with all their merchandises:—that the hundred should be held † once within every fifteen days:—that they should make as *reeve* annually whomsoever they wished, and who should be fit to the king, and to themselves:—that by the *common council of the same burgesses* they should *elect two of the most lawful and most discreet men* of the borough, before the justices when they come into the town of Dundalk to take the assises, and to keep the pleas of the crown, to see that in the same borough justly and legitimately they treat as well the poor as the rich:—that they should have fishery in the waters of Dundalk as well and as freely as ever they had:—that no foreign merchant should sell cloth or wine by retail, unless in gross:—that no foreign victualler should carry away from the port of

* Enrolment in Exchequer Roll of charter by Richard II. mem. Rot. 8, 9. Hen. VIII. mem. 10.

† So Hustings in London.

Dundalk any victuals, unless by the *will or license of the* Rich. II.
burgesses:—that they might freely marry their sons, daughters,
 and widows to whomsoever they wished:—that no sheriff or
 justice of the peace, &c. should intromit within the borough,
 except their reeve or coroners, who should answer for the
 pleas of the crown before the justices itinerant:—that they
 might elect from among themselves one seneschal (or steward)
 who should see that the reeve and other bailiffs justly treat
 the rich as well as the poor:—that no foreign merchant
 should delay in the same borough with his merchandises
 to sell, beyond 40 days:—that no burgess should be bound
 to replevy any thing unless he wished it, although it be
 remaining upon his land; nor answer without the borough
 by any writ unless by writ of right for lands within the bounds
 of the borough:—that no person should hinder any kind of
 merchandise which any merchant to the borough should
 desire to bring, neither by land nor by sea, but in peace
 freely to come and go without any impediment:—that if any
 burgess be attached without the bounds of the borough, the
 seneschal and burgesses should have him at their court, and
 justice should be exhibited there, as the earl, baron, or other
 great men in Ireland in their courts to their men ought to
 have according to law.

WALES.

One or two charters will suffice to establish the same position respecting *Wales*; that the privileges of their boroughs, corresponded with those of England, and continued at this period the same as they had been before:—thus Richard II., in the first year of his reign, granted to the burgesses of *Cardigan*, their *heirs* and successors, that they should in no manner be convicted or adjudged in the counties of *Cardigan* or *Carmarthen*, or in the sessions house, or in any other courts. Cardigan. 1377.

The king confirmed the charter of Edward III. as to the election of the bailiff.

And also in the 12th year of his reign, granted that the town should be a free borough, and that the *men inhabiting* 1388.

Rich. II. the borough, should be the *free burgesses*. That they should have a merchant guild with a hanse; and all liberties and free customs which the burgesses of Newborough in the county of Anglesey have in their borough. That the town of Pertheley. *Pertheley* should be held at the fee-farm rent of 40*l*.

A grant of two fairs and a market then follows, with a provision that "all the people of the *commote* of Cafflogian, should be bound to come to the market in the hundred court;" with a general confirmation of the liberties they had before used.

Cardiff.
1397. The king also confirmed the charter of Hugh Le Despencer to *Cardiff*; and further granted to the burgesses and their successors, that all pleas of forestalling and hamesocken should be pleaded and determined in their hundred court, the jurisdiction over them being before excepted from the charter of Hugh Le Despencer.

CONCLUSION.

We have now arrived at the close of the records to be found in this reign, which are highly important, as confirming the doctrines before maintained; and irresistibly establishing their existence and application down to this period.

Statutes. In the titles and margin of the *statutes*, we have seen the term "corporation" introduced without authority, as in the last preceding reign we found it interpolated into the Year Books: nor will the reader forget the striking interlineations in the records of Colchester.

We also find among the statutes, the mention of "apprentices," which has led us to an explanation of their history; confirmed by the documents relative to "Yarmouth" and "Lynn." And we have also ascertained that the doctrines of villainage, as defined in our early laws, were referred to, and recognized by the legislature; and were in practice in the boroughs.

Charters. The *charters* clearly establish that the boroughs and burgesses continued in substance at this æra, the same as they had existed in the preceding reigns. And the progressive privileges of the Universities, serve to establish, by their

peculiar character, as contradistinguished from the boroughs, Rich. II.
 that the rights, privileges and jurisdictions were altogether
 local, and not of the artificial character of the corporations
 at the present time.

The *Parliament Rolls* also exhibit the importance, and Parliament
Rolls.
 general applicability of the doctrine of villainage, which is
 material as connecting them with the local documents of the
 cities and boroughs.

Scotland, Ireland and Wales are shown to have continued
 in the same state, as they were in the preceding reigns. And
 it cannot be disputed "*that to this time, freemen were only* Freemen.
contradistinguished from villains, under the principles of the
common law, and not with reference to corporations."

That *apprenticeship* was also unconnected with those bo- Appren-
tices.
 dies, and was only one mode of acquiring *freedom*, with refe-
 rence to the general common law. That all these matters
 were determined and adjusted in the *court leet* by the *juries*, Court
Leet.
 in the presence of the burgesses at large; and by the system
 of municipal government then prevalent, *free condition, under*
the common law, and the indispensable pre-existing qualifica-
 tion for a burgess; and *resiancy* as an *inhabitant householder*
paying scot and lot, completing the title to be so admitted.
 And above all, it is the irresistible conclusion from the facts
 apparent from the *Rolls of Parliament*, that there were AT
 THIS PERIOD, "NO MUNICIPAL CORPORATIONS."

HENRY IV.

The reign of Henry IV., short in its duration, and unim-
 portant in its results, does not afford many records illustrative
 of our subject. But it is at this period of our history that
 the doctrine and appellation of corporations are first intro-
 duced. We shall collect and extract some few documents,
 according to the course of our previous arrangement.

Hen. IV.

STATUTES.

In the *statutes* of this reign, we find several fresh provisions made and confirmed to prohibit the unlawful bearing or giving of *liveries*.

Liveries.

1399. In a statute of the first year of Henry IV., relative to the charging of the sheriff with the ferms of the *counties*, the oppressions and mischiefs which had arisen to the *inhabitants* of the *counties*, is made the foundation of the enactment. So that we find, as we have throughout contended, that all questions as to charge and discharge, duty and protection, *both in the counties and in the boroughs*, always related to the *inhabitants* of those respective districts: subject only to the general restrictions of the common law, as to their being of *free condition*, and as to their *residence* being *permanent*, in which case they were entitled to privileges, and subject to burdens in the same manner in the *counties* as in the *boroughs*.

Cap. 13. The 13th chapter of the same year requires, that all the king's officers should be *resident* upon their offices.

Residence

Cap. 15. The 15th chapter, relative to the punishment of the mayor of *London*, for defaults committed there, recites the statutes of the 23d of Edward III. chap. 10, and speaks of the mayor, sheriffs and aldermen, as having the governance in the city, and refers to what is done in other cities and boroughs within the realm: strongly importing, that *all the boroughs were substantially considered to be upon the same footing*.

London.

Cap. 16. The 16th chapter directs, that the merchants of London should be as free to pack their cloths as other merchants.

Cap. 17.
Foreigners

And the 17th gives to foreigners and aliens coming within the city of London, and other cities, boroughs, and towns within the realm, according to the statute of Richard II.,* power to buy and sell victuals within the realm, in gross or by retail; and other indemnities and obligations are provided for them by the 7th and 9th chapters of the 5th Henry IV.;—also by the 4th chapter of the 6th, and the 9th chapter of the 7th year of the same king:—showing that

* Stat. 6 Ric. II. cap. 10.

all other citizens and burgesses of the other cities and boroughs are put upon the same footing as those of London. It is provided also, that all merchandises may be sold in gross as well to all others as to citizens of London. Hen. IV.

We must likewise observe, that in this enumeration of the cities, boroughs, towns and franchises, there is no mention of any corporations. Corporations.

The 18th chapter directs, according to the title, what process should be awarded against *one of the county* of Chester, who committeth an offence in another county. And in the body of the act the persons so described are mentioned as *resident* or *dwelling* within the county;—which is a decisive confirmation of the construction we have given before to that expression in the early charters, and is in conformity with its obvious meaning. Cap. 18.
Residence.

The provisions against purveyance are continued:—and the fees of the marshal of the marshalsea of the king's house are regulated. Purveyance.

In the general confirmation of liberties in the first chapter of the 4th year of Henry IV., the title of the chapter in the common printed statutes, describes it as “a confirmation of the liberties of the church, and of all *corporations* and persons;” but upon referring to the statute itself, there is no such word as “corporation:” but the terms used are “cities, boroughs, and towns franchised.” So that the observations we made in the last reign upon the interpolation of this word in the titles of the statutes, are equally applicable to this; and upon reference to the new edition of the statutes published by the commissioners from the Statute Rolls, it appears that it is omitted in the title. As a proof of the irregularity and uncertainty with which these terms were used, in the confirmation of the 7th of Henry IV., although the same words, “cities, boroughs, towns franchised, liberties and franchises,” occur, there is in that instance no mention in the common printed statutes, of “corporations” in the title. 1402.
Cap. 1.
Corporations.

The 5th chapter of the 4th Henry IV. relative to sheriffs, requires that they should abide in their proper persons Cap. 5.
Sheriffs.

Hen. IV. within their bailiwicks, for the time they should be such officers; and that this should be contained among the articles in the oath.

Cap. 20. The 20th chapter, in the same year, makes similar provisions for other officers of the king.

^{1403.}
Cap. 3. The 3d chapter of the 5th of Henry IV. provides, that
Watchers. *watches* should be made upon the sea coast throughout the realm by the number of *people in the places*, and in manner and form as they were wont to be made in times past. And that the statute of Winchester be observed, and that this article be put in the commissions of the peace.

From hence it is clear, that the *watch and ward*, of which we have before spoken with respect to cities and boroughs, were also, under some circumstances, required to be done in the counties at large. And that they were to be kept by the *inhabitants* of counties, who are in this statute simply described as “the people of the places.”

Although the late provisions of the legislature have, to a certain degree, made the early statutes relative to the return of members to Parliament immaterial, yet, as the following act is important in an historical point of view, we shall insert the substance.

Cap. 15.
Knights
of the
shire.

The 15th chapter of the 7th of Henry IV., recites, that the king, at the grievous complaint of the commons, of the undue election of the knights of counties for the Parliament, which be sometime made of affection of sheriffs, and otherwise against the form of the writs, to the great slander of the counties, and hinderance of the business of the *commonalty* in the said county;—It was ordained, that from thenceforth, at the next county to be holden after the delivery of the writ, proclamation should be made in the full county, of the day and place of the Parliament; and that all they that be there present, as well suitors duly summoned for the same cause, as other, shall attend to the election of the knights; and then, in the full county, they shall proceed to the election, freely and indifferently, notwithstanding any request or commandment to the contrary; and after they be chosen, the names of the persons

so chosen, be they present or absent, shall be written in an indenture under the seals of all that did choose them. Hen. IV.

This statute is further enforced by the first chapter of the 11th of Henry IV.:—in which there is no mention of any qualification of freehold; but on the contrary, by fair intendment, the election was to be by the *commonalty* of the county, expressly including not only the suitors at the county court, who, by some appearance of plausibility, may be contended to be freeholders, but also “others,” who no doubt comprised all the *free inhabitants* of the county.

The 17th chapter, with respect to *apprentices*, we have already observed upon in the reign of Richard II. Cap. 17.
Appren-
tices.

In the 5th chapter of the 9th of Henry IV. which relates to “*novel disseisin*,” franchised towns are mentioned, as well as mayors, bailiffs, and *commonalties*; but there is no reference either in the title or body of the statute, to “*corporations*.” 1407.
Cap. 5.

As we have before referred to the *Nonæ Rolls*, for the purpose of showing upon whom they were assessed, and have had frequent occasion to mention the collection of the “*dismes*” and “*quindismes*,” it should be observed, that the 7th chapter of the 9th of Henry IV., relative to the payment of them by *foreigners*, speaks of the *inhabitants* as the persons who are to be contributory to them. Inhabi-
tants.

Cap. 7.

LONDON.

Few documents relative to London occur in this reign. All its rights had been effectually confirmed in the 7th of Richard II. This king, however, re-confirmed them, in the first year of his reign, granting, in addition, the custody of Newgate and Ludgate, and all the other gates and posterns of the city. Also the gathering of the tolls and customs in Cheap, Billingsgate and Smithfield: and the tronage and weighing of all goods. 1399.

But considerable complaints were made respecting the misgovernment of the city, by the mayor, sheriffs, and aldermen; and to correct it, the constable of the Tower had power given him * “to execute process against the mayor, sheriffs

* Pet. Parl. m. 3, p. 442.

Hen. IV. “and aldermen, for neglecting to redress their errors, default faults and misprisions, which were notoriously used in the city by defaults of their good government:” and these defaults were to be inquired of by men of foreign counties, that is to say, Kent, Essex, Sussex, Hertford, Buckinghamshire, and Berkshire, as well at the suit of the king, as of others who wish to complain of them. And the statute was directed to extend to all cities and boroughs; but Henry IV. ordered it to be repealed.

1406.
Weaver's
Guild.

The weavers of the city of London state, in a petition to Parliament,* that their predecessors, weavers of the city, had granted to them and their successors, that they were to have a *guild*, and that no other should intermeddle in their trade in London, or in Southwark, or other places belonging to London, if they were not of the said guild:—which privileges they enjoyed until the time of King Edward III.; who, against their liberties and franchises, at the instance and supplication of alien weavers, granted to them that they should be exempt from their guild; by which they have been seriously injured, and pray that the said weavers alien be of the guild of the English weavers, and under the governance of the mayor and aldermen of the city, and the bailiffs of the trade for the time being, and contributory to the fee-farm rent, &c.

We have before seen that this was one of the most ancient guilds in the city of London; but still it appears from this document, that it was altogether confined to the regulation of the trade of the weavers; and had nothing to do with the general body of citizens:—except that they were necessarily for the purposes of police and government, under the control and jurisdiction, like all other citizens, of the mayor and aldermen of London.

1407.
Merchant
Strangers.

In this year, the king, referring to the statute of the 7th of his reign, chap. 9,† before quoted, which gave power to sell merchandises in gross to all others, as well as to the citizens of London, granted that no merchant stranger should traffic by buying of, or selling to, any other merchant

* Pet. Parl. m. 3, p. 600.

† 8 Co. 254.

stranger in London, for the purpose of selling again, but Hen. IV.
only for their own use. 1410.
Prisage.

Thomas Chaucer, butler to the king, also complained to Parliament,* that it had been the custom theretofore for every king to have prisage of wine in every port in England, except in that of London and the Cinque Ports; in which places every man who was *enfranchised* could freely take his wines where it pleased him without any prisage; which privilege was granted to the *people only* who *abided* (*demurantz*); and for their service, being *continually abiding*† in the said places; and their children *born* there, and such Residence.
only, ought to have the benefit of the franchise. But in the Birth.
city of London it is, and has been accustomed, that every *foreign man*, not *enfranchised* in the city, who goes to the Strangers.
mayor, chamberlain, or master of any trade in the same city, and for a small sum of money paid to the chamber, or to the master of such trade, is accepted to the franchise, should enjoy the privileges as well as he who has been always *continually abiding* in the same city, notwithstanding the person accepted is of another town or borough in England; to the damage, &c.; and they pray redress.

The king answers, that he will send for the mayor and aldermen; and declared, by the advice of the lords in Parliament, that no one ought to enjoy such franchise if he be not a *citizen, resiant and abiding within the city*; and that *all* Resiants.
others, abiding in all other cities, boroughs or towns, should have and enjoy their franchises to them granted.

Here it appears that the citizens of London had abused the privilege which the common law allowed, of receiving *strangers* who were willing to come and reside in the city, Strangers.
on the payment of a suitable fine or contribution to the common stock; and had been in the habit of illegally admitting into their liberty persons who did *not continually abide* in the city, as was required by the ancient charters to London, as well as the Cinque Ports: but the king declares, with the advice of Parliament, that such usage was illegal;—which is in perfect conformity with the decision of the courts

* Rot. Parl. m. 1, p. 646. † Dover, Domesday, “manens in villa assiduus.”

Hen. IV. of law, which we extracted in the last year, declaring that no persons should enjoy the franchise but citizens *resiant* (in the language of the court leet and wardmotes) and *abiding* within the city, according to the description of the burgesses of Dover in Domesday. It is singular, that, notwithstanding the former decision, and this express and decisive declaration by the king and Parliament, *non-residents* should nevertheless have been allowed to be citizens of London, by which means the essential parts of their institutions have been perverted, and the privileges can no longer with propriety be called the privileges of the city of London,—because the greater portion of the *real inhabitants*, *resiant* and *continually abiding* there, are excluded from the privileges:—whilst persons non-resident are enjoying them. And it should be remembered, that this being a parliamentary declaration, could not be altered by any charter, nor by any means but by Act of Parliament; and it is at this moment the proper law for the city of London.

Non-
resident.

Guildhall. It is a common opinion, that the possession of a guildhall is, in some undefined manner, proof of the existence of a corporation; but no one has condescended to reduce this proposition into any tangible shape, or to point out in what manner these two things are connected; but, like many other erroneous assumptions of the kind, it is left to support itself. A contrary position can easily be established by historical and documentary proof:—thus we have incontrovertibly established, that there were no municipal corporations at the period of which we are now writing:—and yet Dover has a guildhall recorded in Domesday. On the other hand, the city of London continued without one until this reign.

The guildhall was originally nothing more than the place at which the burgesses paid their guild or taxes:—*gildan* being the Saxon term for paying; which, for the sake of euphony, has been converted into “*yield*,”—the guildhall at Reading, and other places, being described in old documents as the “Yield Hall.”

UNIVERSITY OF OXFORD.

A charter of this date,* confirms and recites a variety of others, which had been previously granted, but does not give any additional liberties. 1399.

In this year, Henry IV. granted a charter to the Universities of Oxford and Cambridge,† respecting the presentation to churches and internal regulation of the Universities; but which is foreign to our present researches. 1403.

The same king also, by his letters patent, granted to the two Universities, that they might proceed according to the civil law in their vice-chancellor's courts,‡ for causes arising within the Universities, touching any of their scholars or members. But this patent was held to be void; for the king cannot, by such a grant, alter the law of the land. An Act of Parliament, however, which is not printed, enacts that they may proceed in that manner; except in cases of freehold, felony, or mayhem.§ King's grant void. 13 Eliz.

In the first chapter, in the general confirmation of liberties of this year, there is express mention of those granted to the scholars of the University of Oxford:—which is repeated in the corresponding chapter for the same purpose, in the 13th of Henry IV. Stat. 9, cap. 1. 1407.

We shall see hereafter, in the extracts from the Year Books of this reign, in which the word “corporate” is first introduced into the text, that the universities were about this period, considered to be *incorporated*. But it will also appear, that they were only so considered upon the grounds of their *spiritual* or *ecclesiastical* character. And as they had obtained a charter from the king, authorizing them to proceed according to the civil law, by which the clergy were at that time regulated, the suggestion upon that point made at the commencement of this work, that we derived our notions of corporations from the civil law, is here fully justified:—because we find that the word “corporate” is thus first introduced, with respect to a body described as “spiritual;” and which had

* Rot. Cart. 1 Hen. IV. p. 1, n. 7.

† Rot. Pat. m. 20, p. 1.

‡ Jenk. 2 Cent. 97, ca. 88.

§ Br. Cases, 288, 396. Same, p. 117.

Hen. IV. obtained a charter from the crown, to allow it to adopt the civil law. And as that system of jurisprudence was repeatedly repudiated in this country, we may not only assume, as the facts above warrant, that this doctrine of Corporations was borrowed from the "Universitates" of the Roman law:—but we may also infer, from the decision in Jenkins, that this was contrary to the common law, and unwarrantably introduced:—which will account for the absence of the word in any of our early legal documents, and likewise affords an explanation of the mode by which it was irregularly introduced into the margin of the Year Books, and the titles of the printed statutes.

Cambridge.
1399.

This king, in the first year of his reign, granted (in consequence of a petition from the Commons of England in Parliament) a confirmation of all the privileges hitherto received by the *burgesses* of Cambridge, saving the franchises of the Universities of Oxford and Cambridge.*

Bristol.
1409.

We have no charters relative to Bristol, in this reign; but in the Year Book of this period, there is a case reported at some length, of a claim of cognizance, by the *burgesses of Bristol*:—founded, no doubt, on the previous charters which had given them an exclusive jurisdiction.†

For in the case, reference is made to the charters granted by former kings; and it was said, that the cognizance had been allowed to them long before the statute of Richard II., upon which the question arose; and it was also stated, that their charters had been confirmed by every king, since the cognizance was given. In the report there is no mention of the mayor and burgesses being a *body corporate*; notwithstanding, that term is in the same compilation applied to the universities only three years before. But here the people of Bristol are simply described as the mayor and *burgesses*:—their franchise is spoken of, and the jurisdiction they may exercise within it; as if that term was applicable only to some local limited district, and had not a corporate import.

* Rot. Cart. n. 12, p. 2.

† 6 Year Book, Hil. T., fol. 20, pl. 24.

This king granted, that *Newcastle-upon-Tyne*, with the suburbs and precincts thereof, according to the ancient limits then belonging to the county of Northumberland, should be separated from thence, and be a county of itself, with the title of the “county of the town of Newcastle-upon-Tyne.” That the *burgesses*, instead of bailiffs as formerly, should have a *sheriff*, to be chosen annually, by 24 of the most reputable of that number. That the sheriff so chosen, should be sworn before the mayor of the town for the time being, and account in the Exchequer for the annual profits of his office. That he should have the same power as other sheriffs of counties had, and the privilege of holding a county court every month. That none of the burgesses should plead or be impleaded without their town, concerning any tenements or tenures within the same, its suburbs, or the precincts thereof, or concerning any offences, or other matters arising there, but that the mayor and sheriff should have cognizance of all pleas in the guildhall of that town. That the burgesses and their *heirs* should be exempt from serving on juries without the town. That they should have power to choose six aldermen, who with the mayor, should be justices of the peace. And that the mayor and sheriff should continue to hold the annual courts, theretofore held by the mayor and bailiffs.

Hen. IV.
Newcastle-
upon-
Tyne.
1400.

This king also, by a patent of this date, on a petition in Parliament, pardoned and released to the *men of the counties of Northumberland, Cumberland, and Newcastle-upon-Tyne*, all escapes of felons, fines, issues, and amerciaments, with all kinds of tenths, fifteenths, &c.—on account of the grievous injuries they had sustained by the Scots, and their great losses by the falling of bridges, occasioned by sudden inundations of waters; and on account of the great expenses of the *men of Newcastle* in keeping several of their ships well victualled and armed at sea; and in supporting a nightly watch by 100 men on the walls, for the defence of the town and country adjacent.

1403.

This king also granted a charter to *Canterbury*, in the first year of his reign, as appears by an inspeimus in a charter of Edward IV., which commences by reciting, that, “for the

Canterbury
1399.

Hen. IV. “greater security and quiet of the *bailiffs and citizens, their heirs and successors*; and also to remove the ambiguities “and controversies which had theretofore, or might peradventure thereafter happen to arise upon their liberties, by “reason of certain obscure and general words in the same “clauses in the former charters contained”—and then directs, that no stewards, marshals, or clerk of the market of the household, nor any other minister or officer of the king, should enter the liberty of the city, to perform any matters touching their offices there; but that the bailiffs of the city should perform and exercise all things pertaining to the offices of the steward and marshals, and clerk of the market within the liberty, and should have and receive the profits therefrom coming:—saving always, that when the chancellor or treasurer, or high chamberlain of the king, should happen to come personally to the city, they might jointly or severally, once or twice in the year, as need should be, inquire of the defects of the city belonging to the royal cognizance, and in the king’s name correct and amend the same, as might be reasonably required. That the bailiffs should thenceforth for ever have cognizance of all manner of pleas arising within the precinct of the city and suburbs thereof; and should have, hold and determine the same pleas within the city before the bailiffs, or one of them, in the absence of the other. That they should receive the fines, issues and amerciaments, and all other profits therefrom coming, to the use of the *bailiffs and citizens, and of their heirs and successors*, in aid of the payment of 60*l.* due for the yearly farm of the city:—except nevertheless, pleas upon actions arising within the precinct of the hamlet of Stablegate within the city; which is parcel of the vill of Westgate, without the city: and which vill and hamlet are within the fee and lordship of the Archbishop of Canterbury:—and except also the fines, issues, and amerciaments, as well of tenants as of *resiants* within the lands and fees of the archbishop.

1401. In this year also, the walls of the city of Canterbury were measured; and in the following year, as appears by the book

of murage in the city chamber, the whole of the city was taxed and assessed to the repair of the walls; for bearing which charge, the king granted the citizens license to purchase lands and tenements to the value of 20*l.* by the year within the city, to hold to them and their successors, citizens of the city: the statute of mortmain, or that the city was holden of the king in *burgage*, notwithstanding:—with a proviso for an inquisition of *ad quod damnum*—and with power for them “to dress up arrent, and build up all lands “and places void and waste within the city.”*

Hen. IV.

Burgage
tenure.

In the 2d year of the reign of Henry IV., that king, by a Evesham. charter, dated at Westminster, and directed to the *good men of Evesham*,† also granted in aid of the paving of that town, for four years, that they might take by the hands of good and faithful men, under the direction and supervision of the abbots of Evesham, certain customs there mentioned.

From this charter it appears, that the *probi homines*, or *inhabitants* of the town of Evesham, had, like the burgesses of Reading, Abingdon, and other places near ecclesiastical establishments, began to procure privileges for themselves; although it seems that they were still to continue under the direction and supervision of the abbot. But there is no trace up to this time of the place having been made a borough.

There is a confirmation of this date, of their liberties to the *burgesses of Nottingham, and their heirs and successors*.‡ And the king, after reciting that the town, together with the liberties, in the present Eyre, for certain causes, by the consideration of the same court, had been taken into the king's hands; re-grants all their liberties to them, their heirs and successors, burgesses of the same town; and that they and their *heirs* should have return of writs as formerly.

Notting-
ham.
1403-4.

And moreover the king recites, that by an inquisition it was found that the *burgesses*, from time out of mind, had a gaol in the county of Nottingham:—and he re-grants it to them, their heirs and successors. He further recites, that the burgesses, by pretext of the words in former charters,

* Som. Ant. Can. p. 7.

† Rot. Pat. 2 Hen. IV. m. 23, p. 2.

‡ Vide etiam Rot. Cart. 1 Hen. IV. n. 4.

Hen. IV. that “the men of Nottinghamshire and Derbyshire ought to come to the borough of Nottingham, on Friday and Saturday, with their carts and packhorses”—have had in the same borough one market every week on Saturday:—and that the burgesses might not be hindered in their market; he granted to them, their heirs and successors, that they should for ever have and hold the market aforesaid weekly, with all liberties and free customs appertaining thereto; and also, that they, their heirs and successors, should be for ever quit of pontage, &c.

Dunwich.
1404. In this year the king granted the town of *Dunwich* at fee-farm to Thomas Mowbray, the marshal.* But in the 9th year of his reign, he gave a confirmation to the mayor and bailiffs of all their former privileges.

1409. It appears also in the year book of this reign, that they held cognizance of a writ of formedon:†—but it was said, that the court of the franchise had failed of right, and the demandant sued a resumption returnable; and the tenant being demanded, an essoign was secured by his attorney.

York.
1406. This king (whose object seems to have been, first to seize and then to restore the privileges of the several boroughs,) granted to the citizens of *York*,‡ their heirs and successors, a restoration of all their liberties and franchises, which had been seized into his hands.

Norwich.
1399. He also, in the first year of his reign, granted to the citizens of *Norwich*, a general confirmation of all their former charters. And in this year another,§ which appears by

1403. inspeimus in subsequent charters to this place, by which the king made *Norwich* a county of itself. A mayor was substituted for the bailiffs, and was appointed the king’s escheator. Two sheriffs were also granted:—the escheator and sheriffs of the county being expressly excluded.

In an anonymous case in *Salkeld*, it is said,|| that this king “incorporated” *Norwich*; but the inspection of the above charter will clearly show this to be the same error into

* Rot. Cart. 9 Hen. IV. n. 7.

† Sixth Year Book, Trin. T. fo. 87 B, pl. 38.

‡ Rot. Pat. p. 2, m. 29. 1 Pet. MS. 1936.

§ Rex v. Larwood, 4 Mod. 270.

|| 1 Salk. 191.

which the courts, and writers both legal and historical, have ^{Hen. IV.} so often fallen, in assuming that the early charters were charters of incorporation; for no words of that description occur in these letters patent: which may be seen more at length in Mr. Corbett's learned and interesting work upon those places in England which are counties of themselves.

This king, in the 11th year of his reign, also granted a ^{Lincoln. 1409.} charter to *Lincoln*, confirming by *inspeximus* the charters of Henry III., Edward I. and II., and Richard II.; and fixing the fee-farm. He also granted the city and precincts, *with the exception of the castle*, to the mayor and citizens, and directed that the city, suburbs and its precincts, should from thenceforth be called "the county of the city of Lincoln;"—that they should have view of frank-pledge, and power to elect two sheriffs;—the former name of the bailiffs being expressly directed to be *translated* into that of sheriffs. That the mayor should be the escheator; and the mayor, sheriffs and four of the citizens should be justices of the peace:—and that the citizens should enjoy all their former liberties.

This charter is not one of incorporation, although that term is applied to the place in a statute in the next reign:—in which, however, the term is used as before explained, in its *primitive* local meaning.

There is a charter to *Pomfret* of this date; which is granted ^{Pomfret. 1403.} to the *mayor* and *burgesses*, but it is not a charter of incorporation, although it is expressly stated to be so in the report of the case in *Glanville** relative to this borough: affording another striking instance, in which the term is used without any authority, even by so learned and talented a committee as that which recorded the above assertion. It should at the same time be observed, that even if it were incorporated, the same committee decided, "that the burgesses who ought to return the members to Parliament, were the *inhabitant householders*, and residents within the borough." And there is no pretence for saying, that there can be two classes of burgesses in any borough, who are to partake of the privi-

* *Glanv. Rep.* p. 140.

Hen. IV. leges under the charter; one who should vote for members to Parliament, and the other not; and therefore when the committee thus decided, they determined that the persons who were entitled to enjoy the privileges of Pomfret, as the *burgesses* of that place, were the *inhabitant householders resident*.

Liverpool. This king also, in the first year of his reign, granted a
1399. charter of confirmation to *Liverpool*.

Plympton. A charter of this date, containing an inspeximus of former
1400. charters to *Plympton*, confirms them to the then *burgesses* and their *heirs and successors*.

Huntingdon. The *burgesses* of *Huntingdon* also received a confirmation
1402. of their previous charters.

Sandwich. This king, in the 1st and 4th years of his reign, confirmed the former charters of *Sandwich*, particularly that of the 17th of Edward III., as may be seen by inspeximus in the charter of confirmation of Henry VI.

Poole. Thomas de Montacute, Earl of Salisbury, by a charter,
1411. confirmed the former grants to the *burgesses of Poole and their heirs*; but it does not contain any words of incorporation or of succession, the grant being only to them and their heirs.

Lyme. The *burgesses and other inhabitants* of *Lyme*, in consequence of their town being desolate from various causes, are released from all arrears of their fee-farms and demesnes; and their fee-farm is reduced from 21*l.* 6*s.* 8*d.* to 5*l.**

Ipswich. In the same manner, the poor *burgesses* of the town of
1399. *Ipswich* humbly show,† that anciently their town, at the time when they took it to farm, was rich, &c.; but that lately it had become impoverished and destroyed by the death of *burgesses and the honest men*, and therefore pray a release of the annual farm of 60*l.*

Coventry. In this year the mayor and bailiffs of *Coventry* claimed
Vol. 41 B. cognizance in a plea of debt, and it was objected to them, that they showed no charter for their franchise;‡ to which it was answered, that it had been allowed of record, and nothing farther appears as to the objection.

* Rot. Parl. n. 15, p. 640.

† Pet. Parl. n. 1, p. 477.

‡ 6th Year Book.

We proceed now to the local documents of some of the Hen. IV.
 boroughs, which will serve as specimens of the mode in which
 the law of the leet was administered at this time, and the
 burgesses sworn and enrolled.

The constitutions of Colchester, which, in the reign of Colchester.
1399.
 Richard II., afforded us a considerable insight into the early
 condition of that place, present, after an interval of 20 years,
 an opportunity of farther illustrating its municipal history,
 and showing with what uniformity its government had been
 continued. The election of one individual from each ward,
by the advice of all the commonalty, again occurs:—and still
 more extraordinary interpolations than the former; for there
 is twice introduced by interlineations in Norman French,
 after the words *by the advice of the commonalty*, this im-
 portant addition, “*who have lands or tenements to the value*
of 40s. a year at least beyond reprises:”—words which, in all
 probability, were borrowed from the statute of Henry VI.
 relative to electors for knights of the shire, but which had
 not any application to municipal elections of this description.
 Supposing them, therefore, to have been borrowed from that
 source, it is clear that it was a subsequent and illegal appli-
 cation of the words:—and it would probably establish the
 period of the interlineation; particularly as at the close of
 the same clause, there is written in a later hand, a passage
 relative to the election of justices of the peace; who were not
 generally granted by charter until the reign of Henry VI.

Another clause speaks of the election of *aldermen*, instead
 of auditors, which obviously indicates, that the interlinea-
 tions in the constitutions of Richard II. must have been sub-
 sequent to this period.

It must be remembered, that these constitutions of
 Richard II. and Henry IV., which were altered as stated
 above, for the purpose of giving the select body a controul
 over the commonalty, are themselves subsequent to the
 time of legal memory; and the alterations appear to have
 been even of later date. It is therefore clear, that the ex-
 clusive controul of a select body in Colchester could not
 have existed before the time of legal prescription.

Hen. IV. The clause in the constitutions of Richard II., as to the *burgesses* being sworn, is repeated, and the ordinances are directed to be read openly before the *commonalty* every year.

1472. The return of members to Parliament for Colchester of this year, gives a fuller description of the *burgesses* who made it than is usually found at this period of our history, as it describes "the *burgesses*" in conformity with the ordinances, to be "the *men* sufficient within the borough *dwelling* and residing."

1477. And the returns of Henry VI. and Edward IV. are in the same form.

Hythe. Amongst the corporation records of *Hythe*, are to be found the following entries:—

1399.
B. fo. 8 b. "Thomas Goodeale came before the *jurats* in the common hall, on the 10th day of October, and covenanted to give for his freedom 20*d.*, and so he was received and *sworn* to bear fealty to our lord the king, and his successors, and to the *commonalty* and liberty of the port of Hethe; and to render faithful account of his *lots and scots as freemen there are wont.*"

Lots and Scots.
B fo. 9 a. "Be it remembered, that on the last day of the month of March, in the common house, John Brandon covenanted to give for his freedom 6*s.* 8*d.*, and he was *sworn* to bear fealty to the lord the king, and to the *commonalty* and liberty of the port of Hethe; and to render faithful account of his *lots and scots*, when they shall accrue, as persons are wont to do; and the said John Brandon is admitted."

Lots and Scots. "Walter Bulter, on the 6th day of May, covenanted to give for having his freedom, 2*s.*; and he was *sworn* to bear fealty to the lord the king, and to the *commonalty* and liberty of Hethe, and to render faithful account of his *lots and scots*, when, &c. as freemen are wont to do:—and he is admitted."

1400. And there is also in this year, the following charter granted by the king;

"For the *men* of the town of Hethe.—Henry, &c. Whereas

on the third day of May last past,* more than 200 houses Hen. IV.
 in the town and port of Hethe, together with all the goods and chattels being in the same houses, were unfortunately burnt by fire; and five ships of the said town, together with 100 men being therein, were lately lost and drowned at sea, to the manifest destruction of the town and port aforesaid; and the *remaining inhabitants* there, by reason of the premises, and also of the pestilences and other damages lately happening to the same port, are fully resolved on forsaking the aforesaid town, departing therefrom, and settling elsewhere. We, contemplating as well the premises, as the great and excessive burden with which the said town is charged to our service of the Cinque Ports, by reason that the same town is bound to serve with five ships, together with 100 men and five boys in the same, without any aid or assistance of any other member of the Cinque Ports, for the doing the aforesaid service during 15 days, at their own expences, at the supplication of the *commonalty* of the town and port aforesaid, have pardoned and released for us and our heirs, to the *barons and commonalty* of the same town, and to their *successors*, their proportion of our service, to wit, of five ships, with 100 men and five boys belonging to the same, for five turns, from the time when the said service shall happen during our time and that of our heirs, unless extraordinary occasion shall demand it, &c.”

With respect to these documents, it should be observed, that the *swearing* of the freemen by their taking the *oath of allegiance*, and undertaking to pay scot and lot, are in conformity with the general common law, upon which we have before insisted; and although the three entries vary a little in form, yet they are in substance the same; and amount to nothing more than an enrolment of these persons as *freemen*; but they are not described as burgesses, that being the necessary result of their *inhabiting* and *free condition*, and their consequent *swearing* and *enrolment* as *resiants* of—or belonging to—the borough.

* Rot. Pat. 2 Hen. IV. m. 22.

Hen. IV. This charter, like many others to which we have before referred, is granted to the *men of the town*—a term we have already explained, and which, as the place was a borough, is in fact, a description of the burgesses. That this was the real meaning of the charter, is obvious, for it speaks of the burdens upon the *inhabitants*, of the services to be done for the Cinque Ports:—now that service was to be performed by the *barons* or *burgesses*:—therefore the *inhabitants* were the *barons* or *burgesses*. This is also confirmed by the subsequent parts of the charter, in which the terms *barons* or *commonalty* are used.

YARMOUTH.

1408. We find on the rolls of *Yarmouth* of this date, a continuance of entries of the *north leet*, *north middle leet*, *south middle leet*, and the *south leet*, as we have seen in the last reign. And the *capital pledges present* in the same manner, those above 12 years, who are not in *decenna*—those who have sold in the town, not being burgesses—those who hold *apprentices*, not being burgesses—and those who are worthy of being burgesses—as well as forestallers—the latter being described as not willing that the other comburgesses should have a part of the traffic, as the customs of the borough require.

One person is presented as claiming to be of the liberty, but he is found not to be a *burgess*. It is obvious, therefore, in this case, as we have previously observed with respect to Hythe, that being of the liberty of the borough, and being a *burgess* were, as reason and common sense would dictate, convertible terms.

Inmates. Two persons are presented as *inmates*, or dwelling in the house of another, and holding or carrying on arts or mysteries,—“tenent artificia,”—and are not *burgesses*:—that is, they are not *resiant householders*, and therefore have not been duly sworn; for we find it is expressly ordered, upon the 1406. Parliament Rolls, in this reign,* that artificers should be sworn every year, at the court leet, within which they are

* Rot. Parl. m. 2, p. 601.

abiding, to serve according to the statutes of the 25th of Hen. IV. Edward III. and 12th of Richard II. 1406.

A remonstrance of the *poor burgesses and commons* of *Truro*, to Parliament,* recites a petition to the council, in the first year of Richard II., that from the destruction of the enemy by sea and land, and particularly by the great surcharge of 12*l.* 1*s.* 10*d.* for a *tenth*, every time that a tenth was levied, the town had become so poor, as to make it *uninhabited*, so that it could not bear the surcharge; that upon an inquisition taken, King Richard II. had granted to the *burgesses and commons* of the town, that in every grant of a tenth, for the then next 10 years, they should only pay 50*s.* That upon the expiration of those 10 years, upon another petition, the same king had made another similar grant. That lately, after the last tenth, the burgesses and commons, seeing that they could *not inhabit* without bearing the surcharge, removed all their goods out of the town, and purposed to leave it uninhabited for ever. 1402. 1377.

Thereupon the now king granted that they should pay 50*s.*, until other remedy should be provided by Parliament.

They therefore pray the king, that he would grant to the burgesses and commons, and to their *HEIRS*, burgesses and commons of *Truro*, that in every grant of a tenth in future made, they should only pay 50*s.*

To which the answer was, "Let them sue the king, and he will do thereupon, as shall best seem to him in the case."

In the next entry the commons also prayed for the *poor burgesses and men of Truro*,† in consequence of the town being impoverished by pestilence, invasion, &c., and from the surcharge of 12*l.* 1*s.* 10*d.* for a tenth; and that from default of the inhabitants, the town had become unable to pay the surcharge; that upon inquisition found, Richard II. granted that the town should only pay 50*s.* for the 20 years next ensuing; that the now king had granted the same to the town for six years, which period had now expired; and that because they had the grant only by patent for a term 1409.

* Pet. Parl. n. 10, p. 515.

† Rot. Parl. m. 6, p. 368.

Hen. IV. of years, they had not repaired their houses, and even *purpose to forsake the town*, and take up their *habitation* in another place, if suitable remedy be not applied.

They then pray that it might please his majesty to grant to the *burgesses and men* of the town, and their successors and *heirs, burgesses and men of the town*, for ever only to pay 50s.

These documents, like those which we have recently quoted as to Hythe, indisputably establish, that the *inhabitants* were the *burgesses*; as in truth they are to *this day*: for all the charters are granted to the *burgesses*, and there is no other class of persons at Truro to answer that description, but the *inhabitants*. And it seems also clear from this document, that none could be *burgesses* but those who were *inhabitants*.

PARLIAMENT ROLLS.

Upon the Parliament Rolls of this reign we again meet with entries showing that the ancient laws with respect to villains and strangers were in full operation.

1399. The *villains* of lords, bishops, abbots, priors and other nobles of the realm, fly from day to day to merchant towns, who claim by their franchise, to detain such villains,* and retain them thus forcibly, by which the lords are deprived of their services, &c.†

Guilds. It also appears from the same Rolls,‡ that the king declared that *guilds, fraternities, and men of trade*, in cities and boroughs within the kingdom, which are founded and ordered to good intent and purpose, shall and may grant

Liveries. *liveries*.

Here we have the guilds and fraternities spoken of, as they were to be, in connexion with *trade*; and as being in the boroughs, though not necessarily connected with them, nor with the *burgesses*. And we have an express grant made to them, that they should have *liveries*; from which we shall find, that the liverymen of the several companies in the city

* Pet. Parl. n. 6, p. 448.

† See before, Glanville.

‡ Rot. Parl. m. 4, p. 662.

of London were subsequently derived; and who, like the Hen. IV.
 origin from whence they sprang, ought not to have had any
 connexion with the citizens or their privileges; though under
 the sanction of the legislature, in the reign of George I.,*
 they were allowed to continue their usurpations upon the
wardmen, or the *resiant inhabitant householders* of the wards,
 of many of their important privileges; and eventually they
 were the means of introducing that extensive mischief of
non-resident freemen, to which we have before with so much
 dissatisfaction referred.

From the commencement of our researches we have frequently drawn the attention of the reader to the absence of all terms of "incorporation" in our early documents. We have shown how those terms crept into the margin of the Year Books, and the titles of the Statutes; and we have seen it introduced into the Year Books, as applied to the Universities; being "ecclesiastical,"—or, as they are called,—*"spiritual bodies."* But in no instance has it been adopted with reference to any "municipal body." On one or two occasions it was used in its primitive sense, to describe *local* incorporations—as in the case of Bristol, and Drogheda. But we are at length arrived at the period, when it is used in its legal corporate sense, and applied strictly to corporate powers—for in the Parliament Rolls of this reign we find the following petition.

PLYMOUTH.

The *inhabitants* and *resiants* in the town of Sutton Priour and Sutton Vautort, otherwise called *Plymouth*,† state that their town is a great port and resort for ships coming there, and that oftentimes it had been destroyed by the king's enemies, because it had not been enclosed with any walls or defensible fortress to resist the enemy; and pray that his majesty would grant to them, their heirs and successors, *inhabitants* and *resiants* within the same town, power annually to elect a *mayor* for the good governance of the same town; and that they, their heirs and successors, may be a *body corporate*, to Body corporate.

* Stat. 11 Geo. I.

† Pet. Parl. 13 Hen. IV. m. 4, p. 663.

Hen. IV. purchase free tenements, for term of life or in fee, without the
 Plymouth. king's royal license, &c.

The king will advise to do that which shall seem best in this case.

From this document one inference, at all events, is indisputable, that the people of *Plymouth* were not incorporated before this date. It is also clear, that the persons who applied to be incorporated, were the *inhabitants* and *resiants*—the proper *suitors* at the *court leet*. And the applicants were not confined to Plymouth alone, but to the two towns of Sutton; which, if the petition were granted, would require to be incorporated with Plymouth, in the primitive sense of the word, to which we have before alluded; and in which meaning we shall find it hereafter applied to these places, in the reign of Henry VI.

One object of the petition was, that they might be able to elect a mayor; which, we have before seen by numerous instances, might be done by places not incorporated.

They then require expressly to be made a *body corporate*; but the purpose for which they make that request is also most distinctly stated—namely—that they should be enabled to purchase lands; and not with a view to interfere in any manner with their municipal rights or duties, or with the police or government of the place; or in the least affecting their elections, or the swearing or admission of burgesses. But the request is simply confined to that which is one and the principal effect of incorporation—"to give them the power of purchasing lands."*

What induced the people of Plymouth to think of presenting this petition—and why they should have been the first—except the Universities—to urge this novel claim, it would now be very difficult to ascertain; but there can be no doubt of the fact, that they were the first who made the application; in which, however, they were unsuccessful; for it was not till Parliament, 28 years afterwards, directed the matter to be submitted to the lords of the king's council and the

* Rot. Parl. 8 Hen. VI n. 15, pp. 9 and 18.

two chief justices, that they obtained their grant of in- Hen. IV.
corporation.

From the investigation therefore of these facts connected with Plymouth—and those which will be hereafter pointed out with respect to Kingston-upon-Hull—there is every reasonable ground to satisfy the human mind—and history, law, practice, and reason, justify us in arriving at the conclusion—that this was *the first and real introduction of the proposal for municipal incorporations*—that these incorporations were *intended only for the purpose of giving the corporate powers of purchasing and holding lands, and of suing and being sued by their corporate names*—that this was not effected, as we shall hereafter prove, till the 18th year of the reign of Henry VI.—and that *when municipal corporations were thus commenced, they were not designed, nor had they the effect, in any degree—of altering the general law of the land with respect to freemen—or the laws or usages with respect to burgesses—nor the internal government, police, nor elections of boroughs*; but that in all those respects FREEMEN, BURGESSES, AND BOROUGHs, WERE LEFT UNCHANGED; HAVING ONLY THE ADDITIONAL POWERS—OF TAKING AND SUING AS BODIES CORPORATE—SUPERINDUCED UPON THEM.

Corpora-
tions.

SIXTH YEAR BOOK.

We now resume our extracts from the *Year Books*, from which we have obtained such important materials in the preceding reigns.

Those of this period will also supply us with some information. Thus we find one of the essential principles of the law—“*that no person could be judge in his own cause*”—established by an entry in the second year of this reign, which states—

That the mayor and bailiffs of Lincoln had cognizance of pleas:—and one of the bailiffs sued in the court there; the party sued came into the Court of Chancery, and showed, that one of the bailiffs was judge, and prayed that the suit might not be received in the common pleas:—and it was so.

Lincoln.
1400.
Fol. 4 B.
pl. 14.
M. T.

Hen. IV.

A juror was also challenged, that he was not of the hundred—establishing the rigid administration of the law, according to these local limits—as under the Saxon institutions.

Jury.
Fol. 6.
pl. 22.
M. T.
Court Leet
Fol. 15 B.
pl. 19.
H. T.

And that the court leet was in full practice at this time, relative to burgesses, appears from the entry of an amercement, for not coming to the view of frank-pledge of Yuel, to which all the *burgesses* ought to come, before the steward and port-reeve of the town.

Lincoln.
Fol. 19 B.
pl. 16.
E. T.

And in this year, a fine was imposed upon a person, because, being elected *mayor of Lincoln*, he would not go to the guildhall, to take upon himself the office.

Corporations.

The word “corporation” occurs also in this book in the margin, but there is nothing in the text to justify its insertion. This Year Book seems to have been first printed in the year 1605—when, no doubt, corporations being then commonly in existence, the word was introduced into the margin, in conformity with the then notions respecting them.

Villainage.
Fol. 24,
pl. 16.
T. T.

There is also an instance of a plea of *villainage*, showing that the doctrine of the law as to villains, was then adopted and in practice.

Sheriff's
tourn.
1400.

Fol. 24 B.
pl. 17.

It was also laid down, that amercement at the *tourn of the sheriff* might be levied over all the county, and through the whole hundred.

1401.
Franchise.
Fol. 6 B.
pl. 30.
M. T.

The *franchises* and the *guildable* are also contradistinguished from each other, in the following entry:—Error is assigned, for that the sheriff commanded the bailiffs of the *franchise* to make all the pannel, when one of the three towns was in the *guildable*; in which town the sheriff ought himself to make the array.

Guildable.

Villainage.
Fol. 12 B.
pl. 17.
H. T.

The following question as to *villainage*, also occurs:—Trespass by the abbot of Bury against the defendant, for taking his servant out of his service. *Tyl* said, that one B. was seized of the manor of F., and that the servant was his *villain regardant*; and he, and those whose estate he had, have been seized of him and his ancestors, as villains *regardant*; and that the same B., by deed, gave the same villain to the defendant, and to another; and says, the other had released to him by a deed, &c., by which he became his villain;

and because he had need of a servant, he took him as his villain, to serve him as it was lawful for him. *Reade* said, that a long time before the defendant took to him, the abbot found him a vagrant, and he made a *covenant to serve him, by force of which covenant,* he was in his service* until the defendant took him. *Tyl.*—Suppose I have, upon a certain day, sufficient servants, and my villain makes covenant with another to serve him, and afterwards my servants die, I should then take my villain to serve me. *Gascoigne* denied this.†

The *Bishop of Lincoln* claimed one as his villain, whose goods he demanded of his executor. Lincoln.
Fol. 15 B,
pl. 8. E. T.

And one was claimed as *villain regardant* to a manor. Notting-
ham.
1402.

The *bailiffs of Nottingham* are impleaded by the king as lord of Leicester;‡ because *those* of Leicester ought not to pay toll in any place in England; and that *those of Nottingham* have taken toll of them of Leicester.§ Fol. 3, pl.
9. M. T.
1405.
Fol. 2 B,
pl. 13.
M. T.
Leicester.

The word "corporation" again occurs in the margin; but there is no reference to any corporation in the case; which relates simply to an alien. Corpora-
tion.
Fol. 26 B,
pl. 49.
M. T.

The guardians only of the house of the brethren of the meynors of London bring an action of trespass; and the mayor of London is mentioned as having the *governance* of the city. Guardians
Fol. 31,
pl. 57.
M. T.

In another case it was held, that lands purchased by religious houses, after 21 Edward I., were liable to dismes and quinzimes: and the action was brought by the *prior alone*. Prior.
1405.
Fol. 33 B,
pl. 21.
H. T.

In a subsequent case the jurors were challenged because they had nothing in the hundred. Jurors.
Fol. 46 B,
pl. 7.
M. T.

In another of this date it is recited, that, if a *lord*, who has a franchise and a *leet*, does not inquire of the things inquirable, and punish them at his *leet*, the *sheriff*, for default Leet.
1408.
Fol. 4,
pl. 9.
M. T.

* The reader will recall to his recollection the doctrine we have urged as to the mode in which the *indentures of apprenticeship* operated to disprove *villainage*, and establish the right to *freedom*.

† See 50 Edw. III. fol. 21, Belknap, C. J. K. B.

‡ The general and simple terms by which the respective *burgesses* of Leicester and Nottingham are here described, should be remarked.

§ See stat. 9 Ric. II.

Hen. IV. of the lord, shall inquire of them at his *tourn*, and make
Tourn. punishment thereon.

Here the doctrine we have so often asserted is most clearly and explicitly announced; that, if the borough ceased to exercise its exclusive jurisdiction, it reverted to the sheriff.

Expences
of mem-
bers of
Parlia-
ment.
1409.
Fol. 2,
pl. 4.
M. T.

From the following case we may discover the relative position of the boroughs with respect to the shires, and who were liable to pay the expences of the representatives in Parliament.

Replevin for certain sheep, &c.:—The defendant avows the taking, for the *expences of the knights of the shire*, of which each hundred was to pay part; and Whelt, which is a vill *within a hundred*, was assessed to 40s.; and the sheep were taken there, and sold, and the money was paid.

For the plaintiff it was said, that *Whertl' is an ancient borough, all times paying dismes*, and therefore not chargeable for the expences of *knights of the shire*.

Frem.—If two burgesses of the same town ought to come to Parliament, as other burgesses, and do not come, they shall be amerced.

Thir. said, that the lands of the lords who come to Parliament by writ, shall not contribute to the expences of knights. *Hank.*—In any case it will be contributory: for if a lord yesterday, or to-day, purchases a new lordship, and before the purchase, the same lordship was charged; it would not serve as a discharge ~~by~~ the new purchaser; but the ancient seigniories, which are parcel of ancient seigniories and baronies, would be discharged and quit.

Cul.—It is so by the statute, 12 Richard II. chap. 12, made upon the same case.—*Quere.* If a lord purchases an ancient lordship of the lord, will it serve as a discharge? Or, if one who is not born a lord, purchases an ancient seigniority, will he be held discharged, or not?*

Abbot.
Fol. 16,
pl. 37.
M. T.

An instance occurs of an abbot bringing an action alone, without joining any of his house with him—a strong instance

* Vide the same case, M. T. 10 Hen. IV. tit. Gage deliverance. 13 Hen. IV. tit. Avowry, 239.

that even with respect to ecclesiastical bodies, the doctrine of corporations was not in perfect practice. It was by the abbot of *Glastonbury*, respecting the levying of the quinzime at *Wells*. Hen. IV.

In another case the *churchwardens* bring an action of trespass against the *vicar* of the church, for an injury to one of the parish bells; and it was held it would lie. Fol. 12,
pl. 25.
M. T.

A reference is also introduced into the margin to Brooke, tit. Corporation, 84; but there is nothing *relative to corporations* in the case; although Brooke draws the inference, that the churchwardens were incorporated. Corpora-
tion.

John de B—— sued a writ *de nativo habendo* against A. T. in the county of Norfolk, and the sheriff did nothing; upon which a sicut alias was awarded, and then a sicut pluries, returnable the last term: to which writ the sheriff returned, that he had sent to the *bailiff of the franchise*, who had done nothing—and he was excused of contempt. Villainage.
Fol. 48 B,
pl. 24.
H. T.

Franchise.

Trespass by two masters of the grammar school against another master, counting that collation to their place of the Grammar School of Gloucester, from time immemorial belonged to the Prior of Lentone, near Gloucester; that the prior had made the collation to the plaintiffs, to have the governance of the scholars, &c., which was said to be a spiritual thing. And it was assimilated to the case of a disturbance of a market: but it was answered, that a market was that in which the party had a free tenement and inheritance; but here the plaintiffs had no estate in the school-mastership, &c., but for a time uncertain; and it would be against reason, that a master should be disturbed from holding his school where it pleased him, unless it was in a case when a *university was corporate*, and *schools founded from ancient times*. School.
Fol. 47,
pl. 21.
H. T.

Corporate.

After strict search, we are convinced that *this is the first place in which this term "corporate" occurs, either in the Parliament Rolls, the Statutes, the Year Books, or in any record relating to municipal corporations*. And here, it will be observed, it is applied to a body described as spiritual. It was not till two years afterwards—the 13th of Henry IV.

Hen. IV. that we find the same term occurring in the petition of the people of Plymouth; and it was 28 years after that period, that their petition was granted,

Fol. 84 B,
pl. 34.
T. T. In an action of debt, by the Abbot of Battaill, for a penalty for non-payment of a composition for tithes, it was agreed by all, that the church which was charged was a prebendary of the cathedral church of Chichester. *Norton*.—Sir, It was said that the count was, that the penalty for non-payment of the composition was to the abbot and the convent, and there was no mention of his *successors*; and the action does not lie for the abbot that now is, and his convent, without naming his successor. *Hank*.—If I give land to the abbot and his convent without naming the successors, they have the fee:—which was granted. *Thir*. said, that if the lands be given by the words *dedit et concessit*, to the church of such a place, the parson and his successors would inherit.

This case again establishes how little the doctrine of corporations was at this time understood, even for ecclesiastical bodies.

1411.
Fol. 11 B,
pl. 1.
H. T. In another case it is said, "If an abbot, without the assent of his convent, makes a deed of annuity, and a writ of annuity be brought against the successor, and the plaintiff counts upon the deed which was made by the predecessor, the successor shall be discharged, because the deed at the commencement was not effectual to charge the successor—and consequently, cannot be effectual to charge the house," &c., &c. And *Hank*. said, "that as there is a convent and common seal, nothing can be done to charge the house without the assent of the convent," &c., &c.

Here, although the corporate doctrines are not very clearly defined, yet it is obvious that they were applied to ecclesiastical institutions; but there is no appearance, at this period, that they were also recognized with respect to municipal bodies.

Fol. 13,
pl. 3.
H. T. As to the use of seals at this time, it may be useful to extract this dictum:—In the case of the Abbot of Glastonbury, *inter alia*, it was said, "That in ancient times, franchises

and lands have been granted by codicils not sealed, but Hen. IV. under crosses and other signs made upon them."

SCOTLAND.

With respect to Scotland, we find that, in the first year of this reign, Robert III. granted a charter to *Inverkeithing*, giving the borough at fee-farm to the *burgesses and commonalty*. And it is in this year, being the 13th of Robert III. of Scotland, in the statutes relative to that country, made at Scone, that the "*burgesses*" are for the first time mentioned in the title of the statutes, after the bishops, abbots, priors, dukes, earls, barons, and freeholders.

IRELAND.

This king granted a confirmation of all the former charters to *Dublin*, again specifying the boundaries of the city; and also made to them other grants, which are not material to our present inquiry, further than that the general conclusion may be drawn from them, that the Irish boroughs, like the English, continued in the same condition to the present time. And as an instance that the Irish boroughs received similar grants to those of England, it may be observed, that, in the 11th year of Henry IV., Dublin obtained a discharge from a part of its fee-farm, in consequence of the pestilence; as *Lyne*, *Truro*, and other places in England, did upon other grounds. There were also grants for appointing a mayor, and constable of the staple, for the city of Dublin.

Dublin.
1400.

This king also granted a charter to *Athboy*, which commences by reciting, that the provost and *commons* of the town of Athboy had supplicated him, that as the town was from time immemorial an ancient borough, and situate near the marches; and a great defence to other towns of the parts of Meath, as well against English rebels as Irish enemies; but that, from misfortunes, it had become so impoverished, that it could not any longer sustain itself, without his aid, &c.; and that the *commons* had the following liberties, and used them—viz. electing a provost

Athboy.
1407.

Hen. IV. from among themselves, and presenting him before the lord
 Athboy. of Athboy, to continue for the then year next ensuing: that the provost and *commons* always had pleas of all manner of debts, &c.; and of all other personal contracts within the town and liberties; and of all pleas of assise, of novel disseisin, and of the tenures of those within the bounds of the city, &c.:—rendering to the lord of the town, all issues, &c. of the hundred court, and all other courts within the town:—that they had been used to elect from among themselves an officer called a serjeant, for the execution of judgment of pleas, and for holding a weekly market within the town.

The king, therefore, confirms these privileges to the *burgesses*, their *heirs*, and successors; and further grants to them —That they might have a guild merchant, with a hanse, and other franchises to that guild pertaining; that no one not of the guild might have or deal in any merchandise within the town, unless at the will of the burgesses, their heirs, and successors; that they might have soc, sac, &c.; freedom from toll; that none should make duel, &c.; that they might discharge themselves of pleas pertaining to the crown, *according to the custom of the city of Dublin*; that no foreign merchant should sell cloth by retail in the town, or vend wine, beer, &c., nor delay beyond *forty days* with his merchandise, against the will of the provost and burgesses.

That they should not be placed in assises, juries, &c. by reason of their external lands; nor in personal actions before the king's justices, during the time *they should dwell in the town*. That *foreign men* should not be placed with burgesses in assises, &c., on account of their lands or tenements being in the town.

That no burgess should be convicted upon any appeals, &c., by *foreigners*, but only by their fellow-burgesses, unless the affair should affect the commons of the town. That they should not be sheriffs, coroners, &c., without the town, contrary to their will, *while they dwell in the town*. That they should have the assise of bread and wine; and that they should not be impleaded without the town.

The mayor and commonalty of the town of *Drogheda* also Hen. IV.
Drogheda. received from the king a charter in this year, reciting, that the town of Drogheda is situate in the county of Louth and Meath, and is divided by a certain water, called Boyne, in two parts; that the *men* and *burgesses residing* in the county of Louth were governed by a mayor and two bailiffs; the *men* and *burgesses dwelling* in the county of Meath had been governed by a seneschal and two bailiffs; that separate fee-farms had been granted by the kings of England, but that various dissensions had arisen, and that merchants had refused to bring their merchandise to the town. That the king, upon the supplication, and with the unanimous assent of the *burgesses* and *commonalty* of Drogheda, granted to them, their *heirs* and successors for ever, that the town, with its suburbs, and all places in which the *burgesses* and *commonalty* have had the liberties and franchises in either of the aforesaid counties, should be one entire and “*incorporate*” county by itself; and that the town should be holden for ever at fee-farm. That the town, with the suburbs, should be one liberty and franchise, and under the governance of one mayor and two sheriffs, by the burgesses and commonalty of the aforesaid town to be elected, with their common assent, and ceasing the names and states of the seneschal and bailiffs, that the town of one liberty and franchise should be perpetually holden. That the mayor should be the escheator. And the mayor, sheriffs, burgesses and commonalty within the town, for the common utility might assemble every year, and might fully and without hindrance make ordinances and statutes for the sound governance of the town. That the mayor, immediately after his preferment, should take his oath, the first time before those who in the aforesaid town have hitherto been called “*jurats*”* (and Jurats. who in the same town were thenceforth to be named alder- Aldermen.

* The reader will remember the suggestion we have before made, of the aldermen and common councilmen having been originally the grand and petty juries at the court leet:—and that the term “*jurats*” is applied to the higher officers of the Cinque Ports and many of the towns in Kent. It is impossible not to remark, how strikingly our suggestion is supported by those facts, and this portion of the charter of Drogheda.

Hen. IV. men), to do and execute the offices of mayor and escheator; and that the same mayor and his successors, as mayors and escheators of the same town, should have all power and jurisdiction within the town and suburbs, &c. That the sheriffs should not go out of the town aforesaid to take their oaths; that their names should be sent under the common seal of the town into chancery annually. And that the mayor and aldermen of the town aforesaid, for the time being, and their successors, mayors and aldermen of the town aforesaid, should have full power of receiving the oath of the sheriffs in the hall of the guildhall of the town aforesaid for his office.

That no sheriff or escheator of the counties of Louth and Meath should presume to enter within the town or suburbs, or should in any manner intrmit themselves to exercise their offices there. That the escheator and sheriffs of Drogheda should have the same power, jurisdiction and liberty to whatsoever other things to the offices of escheator and sheriffs pertaining in the town, suburbs, &c. which *other escheators and sheriffs elsewhere within the kingdom of Ireland have*; that the sheriffs of Drogheda, upon every Monday, from month to month, should hold in the same manner as other sheriffs of our dominion of Ireland held their court whensoever it shall please them concerning their liberties; and the profits thereof should receive in common, to the common utility of the *burgesses and commonalty, dwelling* on both sides of the water; as the bailiffs of the town aforesaid had hitherto severally been accustomed to hold and receive; that the mayor, sheriffs, *burgesses and commonalty*, and their successors, should have, within the town aforesaid, one common gaol; and all chattels called waif and stray, and chattels of felons and fugitives, and also escapes, and other forfeitures of such chattels there, in aid of the support of their farm; that the *burgesses and commonalty* by themselves or by their ministers thereunto deputed, might levy, demand and receive tolls, customs and other things whatsoever; exactions of merchants and other persons, as well by land as by water, there resorting in common, and to the

common utility of the same *burgesses* and *commonalty* as Hen. IV.
by virtue of the liberty and one franchise, and not separately,
and confirmed to the burgesses and commonalty, and to
their *heirs* and successors for ever, that none of them should
plead or be impleaded before any justices without the town
of lands or tenements which they hold within the liberty of
the town, nor of any trespass, agreement, or other contract
made in the town or suburbs, &c.

That the mayor and sheriffs should have cognizance of all
pleas of trespasses, agreements, contracts, and debts what-
soever, within the town and suburbs. That the burgesses
and commonalty, and their *heirs* and successors, should have
cognizance of all manner of pleas, assise of novel disseisin,
and mort d'ancestor, of all manner of lands and tenements
within the town and suburbs. That the burgesses and com-
monalty, and their *heirs* and successors for ever, should
have full correction, punishment, authority and power to
inquire, hear and determine by the mayor of the town afore-
said, and four other *good and lawful men* of the said town,
by the same mayor and his successors to be elected, all
matters, complaints, defects, causes, and articles, which to the
office of justice of peace of labourers and artificers do per-
tain, and other things whatsoever within the town and suburbs,
as well by land as by water. That the mayor, and four of
the more discreet and *lawful men* of the town for the time
being, do not in any manner proceed to the determination of
any felony, without a special mandate, &c. That the bur-
gesses and commonalty, their *heirs* and successors for ever,
should have all fines, issues, and amercements to justices of
the peace, within the liberty of the town aforesaid, and the
suburbs, bounds, metes, limits, and precincts aforesaid per-
taining, and from the same judgment in any manner coming,
by their proper ministers to be levied and received in support
of the repair of the bridges of the town aforesaid, and of other
charges of the said town, daily arising or happening; and
that the mayor, sheriffs, burgesses, and commonalty of the
town aforesaid, and their *heirs* and successors for ever, should
have the forfeiture of victuals by law, within the town, su-

Hen. IV. burbs, &c.—viz., of bread, wine, ale, and of other things which to merchandise do not pertain; also, that by translation, alteration, and *changing of the names* of the seneschal and bailiffs, none of the franchises, liberties, privileges, immunities, quit-tances, or commodities, to the aforesaid burgesses and commonalty, their heirs and successors, and the tenants and *resiants* within the same town of Drogheda, the suburbs, bounds, metes, limits, and precincts aforesaid, by our progenitors heretofore granted, and by us confirmed, towards the now mayor, sheriffs, burgesses, and commonalty, or the tenants and *resiants* within the town, suburbs, bounds, metes, limits, and precincts aforesaid, or their heirs and successors, as in common to them to be used, should be in any manner denied, restrained, lessened, or abbreviated.

The original charter is very long and minute—in substance, however, corresponding with those of England. And although it runs to so great a length, there is no mention of any corporate privileges, nor any reference to such a body; but on the contrary, the word “incorporate” is used in the charter in its primitive sense, as applied to the actual local incorporation of the two parts of the town—one on one side of the river, and the other on the opposite side; which makes it highly improbable, that as the term is mentioned here in one sense, it should not also occur in its more extensive meaning, if, as some suppose, corporations were at that time common throughout the realm.

WALES.

The offence which the king had taken against the inhabitants of Wales, from their attachment to Richard II., and the resistance they made to the pretensions of Henry IV. to the throne, as well as the disturbances of which they were guilty, under the conduct of their warlike and powerful nobles, seem to have excited against them, the animosity of the crown and parliament, during this reign.

1400.
Cap. 12.

In the second year of Henry IV. chap. 12,* certain restraints were imposed upon entire born Welshmen, whom the com-

* Pet. Parl. m. 3, p. 476.

mons prayed should be prohibited from purchasing lands within the towns of *Salop, Briggenorth, Lodelowe, Leomynster, Hereford, Gloucester, Winchester*, and all other *merchant towns* whatsoever, adjoining to the marches of Wales, neither in the suburbs of them, upon the forfeiture of such lands and tenements to the lords of whom such lands and tenements were held in chief. And also that no *Welshman* henceforth be elected or received to be a *citizen* or *burgess*, in any city or borough, or town merchant; and that Welshmen who are in any such city, borough, or town enfranchised, being *citizen* or *burgess*, shall find there sufficient security and caution for their good behaviour, as well towards our sovereign, as for their loyalty towards the governors of such *cities, boroughs, or towns*, for the time being, for the safety of the same, if they should desire to remain there. That none of them be in the office of *mayor, bailiff, chamberlain, constable*, or gaol-keeper; nor of the *common council* of such cities, boroughs, or towns henceforth, be received, accepted or occupied in any manner. Hen. IV.

And the king answered, that he willed it so to be. That is to say, of entire Welshmen, born in Wales, and having father and mother born there.

The 16th chapter of the same year provides, that if Welshmen did not restore to Englishmen the distresses taken by them, within seven days, Englishmen might return the like measure to them; and complaint of these acts, was to be made to the governors or stewards, where such malefactors were *resiant*, under the seal of the *sheriffs* of the *counties*, or the *mayors* or *bailiffs* of the *cities* and *boroughs* where the stewards of the franchises or such persons *dwell*:—which seems directly to assume, that both the officers and the parties, were *residing* in the respective places. Cap. 16.

The 17th chapter enacts, that if a Welshman commit a felony in England, and thereof is attainted, and after flieth into Wales,—upon certificate of the king's justices, he shall be executed. Cap. 17.

And the dangers apprehended from Wales, are denoted by Cap. 18.

Hen. IV. the 18th chapter, which provides, that the lord-marchers keep sufficient guards in their castles.

Cap. 19. The 19th chapter, (confirmed by the 26th of the 4th of Henry IV.,) ordains, that no whole Englishman, by three years next following, shall be convicted at the suit of *any Welshman within Wales*, except it be by the judgment of *English justices*; or by the judgment of whole *Englishmen, burgesses*; or by *inquest of boroughs, towns, and Englishmen* of the seignories where such Englishmen be arrested.

Cap. 20. And the 20th chapter provides, that from henceforth, no *Welshmen* be received to purchase lands nor tenements within England—nor within the *boroughs*—nor *English towns of Wales*—upon pain to forfeit the same purchases to the lords of whom the said lands and tenements be holden, as such estate which the said purchaser had in the same; and that no *Welshman* shall be accepted *burgess*, nor have any other liberty within the realm, nor within the boroughs and towns aforesaid.

So that there are in this year six several statutes against the Welsh—five of them immediately following each other, And in the fourth year of this reign, nine several provisions are directed against them—one, that there should be no “wasters, rymers, minstrels, nor other vagabonds.”

That there should be no meetings or congregations there.

That Welshmen should not be armed.

That neither victuals nor armour should be carried into Wales.

That no Welshman should have any castle, fortress, or house of defence; nor be made justice, chamberlain, chancellor, treasurer, sheriff, steward, constable of the castle, receiver, escheator, coroner, chief forester, nor other officer, nor keeper of the records, nor of the council of any English lord.

That the castles and walled towns in Wales should be kept by Englishmen.

And finally it was provided, that no Englishman who married a Welshwoman, should be in any office in Wales.

From the enumeration of offices in the seventh statute above, with respect to Wales, it is clear, that they had in that country officers in every respect similar to those in England. Hen. IV.

TENBY.

We also find some charters previously granted to the burgesses of *Tenby*, by William de Valencia and the Countess Johanna his wife; by which the burgesses are exempted from stallage, passage, toll, &c., and from carrying, mowing, binding, and gathering on the lands and meadows of the earl, and from all other labours pertaining to their mills, houses, or lands: and also from guards of castles—array of arms, &c.

Right of common is likewise granted to them: and power to *choose two bailiffs* fit for the earl's business; who should be subject to no other labours than the holding of the *hundred court*, and collecting the different fines, rents, and tolls in the town and port, &c.

No burgess attached, except for felony, shall be taken further than the gate of the castle of Tenby, if he can find sufficient bail.

Another charter also by Adomar de Valencia, confirms the above; and grants a market, and permission to bequeath the lands or tenements which any burgess might have acquired in the town, or the burgage lands belonging to it.

There is also a confirmation by Lawrence de Hastings, who increases the power of the hundred court.

These charters were confirmed by Edward III. and Richard II.

And Henry IV., at the supplication of the burgesses, allows them to choose out of their own body, a *mayor* and two bailiffs, annually, on the feast of St. Michael; who with their *fellow burgesses*, are empowered to hold all kind of pleas, and decide on all offences within the town and precincts, except in cases of treason.

The bailiffs are to account at the king's Exchequer for all fines, &c.

Hen. IV. No *sheriff* is to enter the town for the execution of any
 Tenby. writ or precept.

The mayor is to hold the *view of frank-pledge* twice a year.
 And the burgesses are to be free of toll.

There was also a confirmation by Humphrey, Duke of Gloucester and Earl of Pembroke; who also appoints the *mayor* to the office of coroner and escheator.

Henry VI., in consequence of great losses sustained by the *burgesses* from his enemies, grants to the mayor, bailiffs, and *burgesses*, exemption from quayage, murage, pontage, pannage, and piccage, in the town and port of Bristol.

Edward V. also granted a confirmation of the previous charters; which was also renewed by Richard III.

1581. And Queen Elizabeth, after confirming all the former laws, liberties, and privileges, as well by *prescription* as by reason of any charters, recites, in letters patent, that, at the supplication of the *burgesses* of Tenby, and for the better government of the town, she had granted that they should be a
 Alderman. *body corporate* and politic; and that an *alderman* should be annually elected from the common council as a justice of the peace, with the usual powers.

The charter also confers another fair, and directs that the mayor should be one of the commissioners of musters; and be empowered to call out the array to their lawful *wards and watches* within the town, liberties and precincts. And that no commissioner of the queen should be permitted to enter the town for any muster, without the mayor being joined with him.

Thus we see Tenby possessing similar privileges to those enjoyed by the English boroughs: taking from time to time confirmations of their charters, but *without any incorporation*; till Queen Elizabeth, in the 23d year of her reign, finally and expressly granted to the burgesses the privilege of being a *body corporate*.

CONCLUSION.

This closes the documents which we shall extract for this reign, so short in point of time, and so immaterial with

respect to the charters. Although it supplies us with the ^{Hen. IV.} important fact of the date when "corporations" were first mentioned in our public records. We have before seen that the term did not occur in any of the early laws, statutes, charters, or local documents. We have now advanced one step further in our investigation, and have fixed the period when the word was first used, as well in its primitive sense as descriptive of local and actual incorporation—as in its legal and political sense—but in which latter signification, we have also established, *that it was not acted upon during this reign.*

HENRY V.

This reign resembles the former, in the shortness of its duration, and in the paucity of documents which it affords for our consideration.

STATUTES.

The statutes contain but little matter necessary to be extracted.

The first chapter relates to the classes of people who should be chosen, and should be choosers, of the knights and burgesses to Parliament.

1413.
Cap. 1.

This act was in force, and ought to have been complied with, till 1774;—but the practice having been for some time contrary to its provisions, it was then repealed, by the statute 14 Geo. III., chap. 58.

As illustrative, however, of the history of this enactment, it may be material to state its substance, which is as follows: "The statutes concerning the election of the knights of the shires to come to Parliament, are to be holden and kept in all points. The knights of the shires from thenceforth are not to be chosen, unless they be *resident* within the shires ;

Residence.

1653
2028

Henry V. and the knights and esquires, and others, which shall be choosers of those knights of the shires, shall be also *resident* within the same; the citizens and burgesses of the cities and boroughs shall be chosen men, *citizens and burgesses, resiant, dwelling, and free, in the same cities and boroughs, and none other in any wise.*"

Here we have the general doctrine of residence applied to the persons who were to vote in the shires, as the *inhabitants* of the county. And as to the citizens and burgesses, the latter are described, in conformity with the doctrine for which we have contended, in words so clear and so distinct, that it is impossible to entertain any doubt upon the subject; they must be *resiant*—that is, *suitors at the court leet*; they must be *dwelling*—that is, *householders*; they must be of *free condition*, and consequently would be *sworn and enrolled*.

Justices. Other statutes of the same reign require, that the justices of the peace should be *resiants, resident and dwelling* in the same shire.

Jurors. It is a matter worthy of observation, that the first general statute which required the possession of lands, as a qualification for a juror on all inquests, occurs in this reign.

In that of Edward I., there had been a statute specifying the number and the age of the jurors; which however mentions nothing of any qualification in respect of land, but annexes the duty of being jurors to those who are *resiant*, complaining of persons being placed in assises who did not *dwell* in the county—and it prohibits such from being impannelled, as well as any person who cannot dispend 20s. yearly.

1293. The 21st of Edward I. provided, that no persons should be put on assises, &c., *out of their proper counties*, unless they had lands and tenements to the value of 100s.; but that provision was expressly confined to assises out of the county—as to those within the county, the jurors were required to have lands to the value of 40s. And there is an express saving, that before the justices errant, and in cities, boroughs, and market towns, it should be done as had been accustomed.

The 28th Edward I., chap. 3, stat. 9, requires, that the jurors should be *neighbours*, most sufficient, and less suspicious. The 34th of Edward III., chap. 4, requires, that they shall be of the next people, which shall not be suspect or procured. And the 42nd of Edward III., chap. 11, provides, that the copies of pannels shall be delivered six days before the sessions; and that none shall be put upon them, but the most substantial people, and worthy of credit, and not suspect, which have best knowledge of the truth, and be nearest. After which follows the enactment to which we are referring, and which provides, that no person shall pass in any inquest upon the death of a man, or between party and party whereof the damage exceeds 40 marks, if the person has not lands or tenements of the value of 40s.

Henry V.

1243.

Considering these several statutes, the documents we have before quoted, and the laws which relate to the election of sheriffs, escheators, and coroners — all of which state generally, that the elections shall be by the *commons* of the counties—it is impossible not to conclude, that the *inhabitants* generally of the counties, performed all the public functions within them, subject only to the restriction of their being, like those in the boroughs, *resiant, dwelling, and free*; and the qualification of possessing lands, particularly to the amount of 40s. per annum, which was, by the subsequent statute of Henry VI., made necessary for voting for members of Parliament, was at first only introduced for the limited purpose of showing who should be jurors.

Inhabitants.

The statutes of this reign, like the former, contain provisions relative to the Welsh — purveyance — merchant strangers—and hosts. And with respect to the latter, that as the statutes of the 5th of Henry IV., chap. 9, requiring sufficient hosts to be assigned to them by the mayors, &c., and that the merchants should not remain in other places but with the hosts, had not been carried into due execution; it is provided, that those statutes should be firmly holden and kept in all points — which, it will be remembered, would, in some degree, repeal some of the charters we have before extracted.

Henry V. There is also a statute relative to false verdicts given in
 Lincoln. the city of Lincoln, which recites the statute of the 13th
 1415. of Richard II., and the charter of the 13th of Henry IV.
 Cap. 5. to that place, which has been before quoted amongst the
 charters of that reign.

This statute afterwards directs, that the pannel may be
 made from the people of the county of Lincoln, notwithstanding that charter, or any thing therein contained; or
 any franchise granted to the citizens, or other usage to the
 contrary; or that the said city of Lincoln is so made an
 incorporate county of itself, and severed from the county of
 Lincoln. From which form of expression it is clearly
 obvious, that the word is used in its *primitive sense*, as denoting the *local incorporation* of the city, suburbs, and
 precincts, and their *severance from the county at large*. But
 bearing in mind the unauthorized introduction before of the
 word "corporate," in the titles of some of the statutes, it
 should also be here remarked, that the English translation
 is, "or that the said city of Lincoln is so made incorporate,"
 instead of "is so made an incorporate county by itself, and
 severed from the county of Lincoln." The above view of the
 statute is confirmed, by the fact of the mayor and common-
 alty of Lincoln, in the 10th year of Henry VI., petitioning
 Parliament for a licence to hold lands *in succession*, which
 would not have been necessary if they had been previously
 incorporated.

Oxford. It appears also from the statutes of this reign, that the
 1421. scholars and clerks of the *University of Oxford* had been
 Cap. 8. in arms, and had disseised many persons of their lands and
 tenements, and had done other acts, of which complaints
 had been made, and for which they were declared to be
 outlawed; and upon the certificate of the chancellor, were
 pronounced to be banished the realm.

The 7th chap. of the 2d statute of the same reign, with
 1415. reference to the weights of gold, speaks of cities, boroughs,
 Cap. 7. and market towns; but like the statutes of the preceding
 reigns, says nothing of their being *corporate*.

Henry V.

CHARTERS.

The charters of this period are neither numerous nor important:—and consist principally of confirmations:—thus, of 43 charters entered upon the charter rolls of the first year of this reign, 40 were confirmatory of previous grants.*

All the previous charters, customs, and franchises, were London. twice confirmed to the citizens of *London*.

And this king, in the third year of his reign, by letters patent, recites, that his father, late king of England, had, on the 8th day of May, in the 11th year of his reign, among other things, granted, for himself and his heirs, to his burgesses of the town of *Lyme*, in the county of Dorset, situate upon the sea coast, *their town*, with the *liberties and franchises* to the same in any manner belonging, for ten years, under the rent for the *fee-farm* of 100*s.*, yearly, and for tenths and fifteenth, 13*s.* 4*d.* only. And the king, because the *burgesses* had restored, to be cancelled, the letters of confirmation, to the intent that Thomas Cook and Joan his wife, might have the town, with the liberties and franchises thereof, from the king's grant, with the *assent of the burgesses*, did grant, for himself and his heirs, to the aforesaid Thomas and Joan, the town, with the liberties and franchises, for the whole life of the said Thomas and Joan, and either of them longest liver, under the same rent.

Lyme.
1416.

This king also, in the first year of his reign, granted another charter to the mayor, bailiffs, and burgesses of *Nottingham*, confirming all former grants;—that they should have cognizance of pleas, chattels of felons, fines for trespasses, *return of all writs*; and that the mayor, recorder, and four others, should be justices of the peace.

Notting-
ham.
1413.

Mr. Corbett, in describing this charter, states, that purprestures, and all the waste within the town, were to be in support of the *corporation* thereof: but it is obvious from Domesday, and the charters of Henry II., John, Henry III., Edward I., Edward II., Edward III., and Richard II., which we have before quoted, that it was *not incorporated* before

* Vide Cal. Rot. Cart., p. 197.

Henry V. this time; and the charter, of which the author was speaking, is clearly not one of incorporation, as appears from our inspection of the original rolls at the Tower. The term therefore could not, with propriety, be applied to this place.

Norwich. 1417. The king, in the 5th year of his reign, for the purpose of settling disputes then existing between the *commons* and the *mayor of Norwich*, granted a new charter, confirming all the former, particularly that of Henry IV., and directing the mode in which future elections should be conducted.

Chester. 1413. This king also granted, whilst Earl of Chester, a confirmation of former charters and liberties to that place; and

Plympton. 1415. the same to the burgesses of *Plympton* and their *heirs*:—in the second year of his reign, the same to *Gloucester—Yarmouth Scarborough*—and various other places.

Wells. 1421. And in the ninth year, he also granted confirmations to *Wells* and *Dunwich*.

GUILDS.

Bristol. 1416. We find that there were at this time, grants of guilds and fraternities to some of the boroughs. Thus, in the fourth year of this reign, there is a charter respecting the foundation of a fraternity at *Bristol*, referring to letters patent of Henry IV., authorizing the establishment of an hospital, almonry, or guild, in the suburbs of Bristol; and that it should be a perpetual *incorporation*, near Lawford's gate. That there should be a master or guardian of the fraternity; and that he should be *a person capable to receive lands and tenements to him and his successors for ever*;* to plead and be impleaded; and to have a common seal; that they might make ordinances and constitutions for the government of the house; that they might transfer this almonry or guild, and found a guild or fraternity, in honour of the Holy Trinity, of St. George; *incorporating* and giving it the usual corporate powers, with authority to elect a master of the guild or fraternity.

Incorporation.

* Here the important and characteristic capacity of a corporation to hold lands and tenements by *succession*, is, for the first time, expressly and distinctly given to an eleemosynary fraternity:—but it was not, as yet, conceded expressly to municipal bodies, although they did, in point of fact, and always had, held and enjoyed lands and franchises in succession and perpetuity.

A similar grant is made to *Norwich*, reciting, that a fraternity or guild of St. George had existed in that city for thirty years then past—which the king ratifies and confirms—and grants that the brothers and sisters thereof, who may wish to be of the fraternity or guild, should be a *perpetual community*; and should have the name of the “Guild of St. George of Norwich.” Also that they might yearly choose an alderman and two masters; that they should be capable of acquiring lands, tenements, and rents to them and their *successors for ever*; plead and be impleaded; and have a common seal. That they might hold lands and tenements within the city to the value of 10*l.* a year; to be held of the king in *burgage*, notwithstanding the Statute of Mortmain.

Henry V.
Norwich.
1417.
Guild.

Perpetual
commu-
nity.

Successors.

Burgage.

We have before suggested, that the *doctrine of corporations* was borrowed from the *civil law* through the ecclesiastical institutions of this country, and the eleemosynary guilds, which were in a great degree connected with them.

Corpora-
tions.

We have seen the term “corporate” applied to an ecclesiastical body in the case of one of the universities:—and an *ineffectual attempt* made by a *municipal body* to obtain that character. Notwithstanding which here are two guilds actually incorporated, with the same corporate powers, which in subsequent periods were so generally granted to municipal bodies.

The positions therefore for which we have contended, are greatly confirmed by these documents, viz., that *there were originally no municipal corporations*:—that the corporate doctrine was first borrowed from the ecclesiastical and eleemosynary bodies:—that, even with respect to them, the language and doctrine of corporations was not fully or publicly adopted, nor reduced to clear and distinct principles till about this period:—and that although they were adopted about this time by those bodies, *they were then withheld from the municipal establishments*. And as the incorporation of the guild at Bristol is made in such clear and precise terms, it will be curious to contrast it with a document of the same reign, after the interval of only a

Henry V. few years, respecting the election of sheriffs for that place; which, although of considerable length, and referring repeatedly to the transactions of the mayor and citizens, has not in it one word relative to a "corporation"—so that this contrast between the "guild" and the "municipal body" of the same place is decisive to establish the distinction between them, for which we have throughout contended.

Bristol.
1421.

The document is as follows: Translation of an entry of the election of sheriff of Bristol, taken from the *Red Book*—

Be it remembered, that Nicholas Bagot, late sheriff of the town of Bristol, in the time of John Spyne, mayor, died whilst the said Nicholas was serving in his office of sheriff; after whose death, the mayor caused *the good men of the common council* of the same town to be summoned together, who being assembled, *elected out of themselves*, according to the form and effect of the charter of King Edward III. granted to the *burgesses* of the town aforesaid, in order that out of the same three persons, one might be chosen by the king and his counsel, as sheriff of Bristol. And hereupon, they sent to the chancellor of England, letters patent, concerning that election, under the *common seal of the said town*, reciting letters patent from the king, which stated "that the *mayor and commonalty* of the said town of Bristol, of their *common assent*, had *elected out of themselves*, three persons, whose names had been sent to the king in his chancery, under the common seal of the said town, for one of the same three to be preferred by the king, as sheriff of Bristol, according to a certain form, specified in the said charter of Edward III.; and that the king, confiding in the fidelity and circumspection of the aforesaid Nicholas Bagot, had committed to him the said county of Bristol, with the appurtenances, to be kept during one year; and inasmuch as the said Nicholas Bagot, whilst he (by force thereof,) was in the execution of his aforesaid office of sheriff of the same county, on the day of the making these presents, has departed this life—vouchsafe your lordship to know, that the aforesaid *mayor and commonalty, of common assent, have chosen three persons out of themselves*, in order that out of the same three persons, one may be chosen by the king, and his

council, as sheriff of Bristol for one year, to do all things which pertain to the office of sheriff in the county of Bristol; which said letters patent had been received by the chancellor. And by himself, and by the council of the king, John Milton had been preferred as sheriff to keep the county of Bristol." After which follows the appointment of John Milton by the king.

Considering the charters which had been before granted to Bristol, and those which were subsequently conceded, up to the year 1684, 36th Charles II., when it was *first incorporated*, the reader must be fully satisfied, that Bristol, like many other places, continued, for many centuries after the time of legal memory, before the particular advantages of incorporation were superinduced upon its general character as a municipal body. And in truth, the circumstances with respect to this place are still more striking, because not only was the guild to which we have before referred, incorporated first in the suburbs, and afterwards in the city itself; but also in the 15th of Henry VII., 1499, a chamberlain being appointed by charter at that time, it is expressly declared in the same letters patent, that he shall have *perpetual succession*—that he shall be called by the name of chamberlain—that he shall have a seal—*plead and be impleaded by the name* of the chamberlain of the town of Bristol—and that he and his *successors* shall keep the revenues, profits, and emoluments, for the use of the mayor and commonalty, with all charters, evidences, and muniments. But *nothing is said in that charter of the incorporation of the body at large*. So that these *corporate powers are given to the chamberlain, but withheld from the citizens*. And probably it was given to the former, because the latter had no such rights; for it appears, that in 1681, 34th of Charles II., a *quo warranto* was filed against them, for assuming, amongst other things, to be a *body corporate*:—which from the former charters, and the particular nature of that of the 15th of Henry VII., it is obvious they had no right to claim. And therefore we find, as might be expected, that in consequence of the *quo warranto*, the mayor, burgesses, and commonalty surrendered their charters. Upon which,

Henry V.

Chamberlain.

Henry V. Charles II., in the 31st year of his reign, made them a new grant, *expressly incorporating* the citizens and *inhabitants*;—giving them a *corporate name—perpetual succession*—making them capable of *pleading and being impleaded* by their corporate name—and of *holding lands and tenements* by them and their successors, &c. So that the *period when Bristol first became incorporated*, is in this instance, as will hereafter be proved respecting the greater part of the other boroughs, *most clearly and accurately defined*.

Yarmouth.

As to Yarmouth, the entries of the four leets—the capital pledges or jury, and their presentments, continue precisely in the same form during this reign.

Return of
members
in the
county
courts.

There is a peculiarity attending the return of members to Parliament at this period, which has been much commented upon by authors who have written upon the subject, and has been considered of much importance, though it seems capable of easy explanation. The members for the boroughs are stated to be returned at the *county courts*; the following is a specimen of the kind.

Hunting-
don.
1413.

The usual writ was directed to the sheriff of Huntingdon; to which he returns, that two burgesses had been duly elected for that borough, each having given their pledges, and refers to the indenture of Huntingdon thereto annexed, which states, that at the county court for Huntingdon, held at St. Ives, George Gydyng, John Taylor, John Foxton, John Feller, John Leight, Simon Clapthorne, Thomas Purslee, and Roger Chamberlayne (eight persons), who were present at the proclamation, had elected Robert Danke and John Denton, two fit burgesses, with the *assent of the whole commonalty of the borough* aforesaid (ex assensu totius communitatis burgi prædicti), who had *full and sufficient power for themselves and the commonalty of the borough* aforesaid, to do and consent to all things in the Parliament. In witness whereof the said George, and the said electors, set their seals to one part, and the sheriff his seal to the other.

1414.

And in the next year a similar writ issued, and a similar return was made, excepting that it was at the county court of

Huntingdon instead of St. Ives, and that 14 persons instead Henry V. of eight joined in the return as burgesses; many of them different persons from those who signed the former return.*

Brady, and other authors, have described these generally "as returns made in the county court for the boroughs," from which it has been loosely inferred, "that the elections were also there;" but from the above documents it will be seen, that the election was made in the borough, with the assent of the whole commonalty; but instead of sending the return by a common messenger to the sheriff, wherever he might be found, some of the electors themselves carry it to the sheriff in his county court, where he was sure to be met with, as presiding at the election for the county.

In this reign we also find many returns at the same period by the *whole commonalty*, of which Oxford, and other places, are instances.

PARLIAMENT ROLLS.

In the Parliament Rolls of this date we find the following 1414.
entry as to Liverpool:—

The poor *tenants* of the king of his duchy of Lancaster, Liverpool. the *burgesses* of the borough of *Liverpool*, pray the Parliament,† that as King John, by his letters patent, granted, that those who held any *burgage* within the town of Liverpool ought to have all manner of liberties and free customs, as any borough upon the sea had; and that King Henry III. had granted, that the town of Liverpool should be a *free borough*; that the *burgesses* of the same borough should have a merchant guild and a hanse, with all liberties thereto belonging, with soc, sak, thol, them, which the now king had confirmed generally, and that the word "sak" is interpreted "free court," as is declared of record in the Exchequer; by authority of which grants the *burgesses* have always held a court within the borough, and the perquisites thereof received, but that of late the *king's ministers* of the county of Lancaster had usurped and held certain courts within the

* 1 Pet. MS. In. Temp. Lib. p. 369.

† Pet. Parl. n. 2, p. 55.

Henry V. borough, since the aforesaid confirmation, and never before, Liverpool. and had molested and disturbed the burgesses in their liberties and franchises, against the said charters.

The petition then concludes by praying redress for the same, and the enjoyment of their liberties under the charters.

The matter is referred to the king's council, with authority to do justice therein.

If there is any borough in England in which burgage tenure ought to prevail, surely it should be Liverpool, in respect to which this statement is made, "*that the privileges granted by King John were given to those holding burgages within the town.*" On the contrary, however, the privileges of that place have never been enjoyed under that right, but under one totally different, and even less justified by law.

Burgage tenure, in the sense in which it is commonly used, ought not to have prevailed in any borough, for it has *no legal foundation*, excepting as explained in the manner we have stated before—viz., as descriptive of the *occupiers of houses* within a borough:—that is, the "*inhabitant householders*," who, as every house within the borough must be held by burgage tenure, were necessarily *burgage tenants*. In this sense, and in this sense only, it is a legal right, founded upon our ancient law, and ought to have prevailed in Liverpool, to the establishment of the right of the *free inhabitant householders*: and not, as has been the case, of the *freemen of the corporation*.

The document we have extracted above, is also important, as showing what, in the reign of Henry V., was considered to be the real intention and effect of the liberties granted to boroughs. Those granted to Liverpool are described as being "*the same as those which other boroughs had*;" and the being a *free borough*, is connected with having a "*free court*," or independent jurisdiction, separate from the county at large:—which we have, from the commencement, shown to be the essential characteristic of a borough. And so it appears to

have been considered in this petition from Liverpool. Whilst, Henry V. on the other hand, the usurpation upon its privileges is described to be by the *officers of the county coming within the town to hold courts there*. The remedy sought, is the restoration of the charters of the several kings, under which it acquired its exclusive jurisdiction. And it should not be overlooked, that the *Parliament petitioned the king* upon these grounds; even in those times, when the commons—proud of their newly-acquired power—often trampled upon the rights of the king—yet, on this occasion, they displayed a due regard to the prerogative of the crown, by *refusing*, in this instance, as they did in many others, *to interfere with these matters of executive government, which undoubtedly belonged to the crown*:—and therefore they properly and constitutionally referred it to the decision of the king in council.

SIXTH YEAR BOOK.

As an additional instance that the law continued at this æra in other respects the same as it was in the Saxon and early Norman periods, we have in this reign a record of a man indicted before the *sheriff*, at his *tourn* in Holborn, in the county of Middlesex, for a purpresture in the highway.

1420.
Fol. 8,
pl. 4.
Sheriff's
tourn.

The doctrine of *villainage* seems to continue in this reign, the same as it had been before, and was actually in practice; for in the Year Book of this period, we find an abbot, who was defendant, alleging that the plaintiff was his *villain regardant*, whose manumission is afterwards mentioned. And again in another case, a defendant averred, that the plaintiff was his *villain regardant*; to which the plaintiff replied, that he was *free*, and of *free estate*; and upon this they went to issue. In the course of the argument, manumission was referred to; and the doctrine of villainage generally considered:—and it was argued, that if a man brings a writ of *libertate probanda* against another, and upon this they are at issue, and the plaintiff finds surety; if pending this issue, he against whom this writ is brought, shall *reseize* him for his *villain*, he shall be fined to the king, &c.

1414.
T. T.
Fol. 10 B.
pl. 11.
Villainage.

1421.
E. T.
Fol. 1 B.
Free.

Henry V. In the first eight years of this reign, we have no mention of "corporations," either in the margin or the text. In the 1423. M. T. Fol. 8 B. Corporations. ninth, there is a reference to Brooke's title to corporation in the margin of a case, in which a prior brings a writ of entry, by his name of prior, and in his own right, and had used no surname. For which, judgment was prayed of the writ. And it was adjourned. But it was said by two of the judges, that if an abbot purchase to him and his *heirs*, the abbot shall only have an estate for the term of his life, because he purchases as an abbot to him and his heirs; and it cannot descend to his heirs, nor to his brother, as it could before he entered into religion, by which his blood was corrupted—which therefore does not appear to justify the assumption, that it related at all to corporations, because the case seems to have been decided solely upon the ground of the claimant having entered into religion, and by that means barred the right of inheritance of his heirs.

This case appears decisively to show, that the doctrine of corporation was not then generally adopted:—or the abbot would have sued, and would have supported his plea on the ground of his being a body corporate:—and that which he had purchased, would have accrued to the benefit of him and his *successors*.

IRELAND.

Dublin. Henry V. in the second year of his reign, granted a confirmation, by *inspeximus*, of the charters of King John and Edward II. to Dublin.

Cork, &c. And also a confirmation of the charters of Edward II., of liberties to Cork, Waterford and Drogheda.

Dublin. In the 7th year of his reign, the king also granted a charter to Dublin, providing, that the mayor and bailiffs should be justices of the peace, and the mayor clerk of the market and escheator; confirming also to the mayor and commonalty all their lands and tenements:—*being the liberties and confirmations usually granted to the English boroughs.*

As to Wales, we find that Richard de Beauchamp, Earl Henry V. of Worcester, confirmed the charters of Hugh le Despencer to *Cardiff*; and further granted to the *burgesses*, their *heirs* and successors *residing* within the borough, that they should be tried by *burgesses of the borough*, and not by *strangers of the county of Glamorgan*. And if any of them should be tried upon account of felony in the county of Glamorgan, it should be determined by six *burgesses* of the borough, and six *men** of the visne of the lordship—that the constable of Cardiff should be mayor—and that 12 of the burgesses should be aldermen. That at Michaelmas the aldermen and burgesses should elect four burgesses, theretofore called *port-reeves*, out of whom the constable should elect two to be bailiffs, and that they should have two serjeants-at-mace. Provision is also made for filling up the vacancies of aldermen.

1422.
Cardiff.

Resiants.

The similarity of this charter to those of England is too apparent to require further comment.

CONCLUSION.

The documents of this reign, though few, have given us the important description of burgesses—as *dwelling, resiant, and free*;—they have shown the general necessity of *residence*, as established by the provisions of statutes, and the grants of charters. They have afforded us an instance of the term “incorporate,” used in its *primitive sense*; and they have proved, that it was not then generally applied to cities and boroughs; although many authors have gratuitously assumed the contrary.

As a contrast to these facts, the actual incorporation of guilds has been shown:—and that corporate powers were granted to one officer of a city; but in the same place withheld from the general body of the citizens.

The production of the returns for boroughs at the county court has been explained; and the real nature of a borough

* This distinctly shows that the burgesses of the borough were put in opposition to the *men* of the lordship—“the free men” of each of those districts being the persons intended—but in *boroughs* they had the appropriate name of “*burgesses*.”

Henry V. has been defined by a document of this period, showing it to be founded upon exclusive jurisdiction, as separated from the county by *charters* granted by the *king*, in the exercise of his undoubted *prerogative*, with which the Parliament were unwilling to interfere.

And, finally, it is proved, from the recorded decisions in the Year Book, that the early common law of England, with reference to the sheriff's tourn, and the important head of "villainage," were in full exercise at this period.

HENRY VI.

The next reign exceeds, both in duration and importance, the one we have immediately quitted, and will introduce us to the establishment of those *incorporations* which we have before seen had not existed in any antecedent period of our history. We shall adopt the succession of the records as before.

STATUTES.

The statutes contain the same indications of oppressions by the purveyors which the former reigns have afforded, with provisions respecting the *liveries*, and alien merchants. Also the abuses of escheators, and the regulation of persons merchandising with Wales.

Liveries.

1432.
Cap. 3.
Irish.

All persons born in Ireland, repairing to Oxford or Cambridge, and living there without the jurisdiction of the university, to the great dread of the persons residing in the neighbourhood, were to depart out of the realm, with the exception, amongst others, of burgesses and other *inhabitants* in cities and boroughs, of good fame, who have found *good*

Pledges. *surety*.

1423.
Cap. 8.
Irishmen.

The 8th chapter of the second year of this reign, relative to Irishmen resorting into the realm, and being put in Pledges. *surety* for their good abearing, after reciting the last act,

amongst other things, provides, that "as in the said ordinance Hen. VI. no mention was made before whom, nor in what manner, the surety of good abearing should be found, the chancellor of the universities of Oxford and Cambridge for the time being, and every of them within his jurisdiction, shall take the sureties of scholars within the same universities, and certify the same into the king's chancery; and that the justices of the peace within the counties, and mayors and bailiffs within cities and boroughs enfranchised, shall have power to take before them such manner of surety of good abearing, and to do execution upon them which shall abide or do against the said ordinance from henceforth."

Here we have an instance of a part of the municipal jurisdiction of the *court leet* of the boroughs of Oxford and Cambridge given to the universities; at the same time that the ordinary jurisdiction of mayors and bailiffs in cities and boroughs is recognized, and the system of *pledges* and suretyship is enforced. Court Leet. Pledges.

In the 4th year also, in an act which directs, that "every sheriff shall return such writs as be directed to him at such days as they be returnable, and shall warn those jurors which be impannelled;" it is provided, amongst other things, "that the *stewards of leets* and hundreds have power to inquire of such misprisions and defaults of the said sheriffs, and to certify their said injuries before the justices of deliverance, so that they may put the said parties to answer, upon which answer, if they be found guilty, they shall make fine and ransom to the king," &c. &c. 1425. Cap. 1. Leets.

In an act of this date, relative to the wages of artificers and workmen, it is provided, amongst other things, that the mayor of the city of London for the time being, and the mayors and bailiffs in every city, borough, or town, shall have power and authority to make proclamation in their full sessions once a year, as to the wages of servants. 1427. Cap. 3.

A statute of this date, respecting the common balance and weights, directs that the *inhabitants* shall use the common balance freely without any payment: but *foreigners* are to pay for the use of it. 1429. Cap. 5. Inhabitants Foreigners

Hen. VI. This statute speaks of every city and borough; but makes
 1429. no allusion to corporations. It provides, that, in every
 Cap. 5. city, borough, and town, every "enheritantz" of the city, borough, or town, may use them gratis; but every *foreigner* is to pay for the use of them. The word "enheritantz" is in the English translation rendered "inhabitant." And the *cities* are by that statute fined for defaults 10*l.*; *boroughs*, 5*l.*; and *towns, where a constable is*, 40*s.**

Cap. 7.
 Knights of
 the shire.

It is in this reign that an alteration was made in the qualification of those who were to vote for the knights of the shire; and in an act, the title to which is, "What sort of men shall be choosers, and who shall be chosen knights of the Parliament;" it is recited, "that the elections of knights of shires to come to Parliament, in many counties of the realm of England, had of late been made by very great, outrageous, and excessive number of people dwelling within the same counties, of the which most part was of people of small substance, and of no value, whereof every of them pretended a voice equivalent, as to such elections to be made, with the most worthy knights and esquires dwelling within the same counties; whereby manslaughter, riots, batteries, and divisions among the gentlemen and other people of the same counties, were likely to arise and be, unless convenient and due remedy was provided." In consequence of which, "the king ordained, by authority of Parliament, that the knights of the shires should be chosen, in every county, by people dwelling and resident in the same counties; whereof every one of them should have free land or tenement to the value of 40*s.* by the year, at the least, above all charges; and that they which should be so chosen, should be *dwelling* and *resident* within the same counties; and such as had the greatest number of them that might expend 40*s.* by the year and above, as afore is said, should be returned by the sheriffs of every county, knights for the Parliament."

This restrictive qualification of electors for members for

* This passage marks the distinction between boroughs and other towns;—the former were under the government of the king's officer—mayor—bailiff, or portreeve—the latter had only the ordinary conservator of the peace under the common law—the constable.

the county, which seems to have been introduced at this period for the first time, was probably borrowed from the statutes to which we have before referred with respect to jurors, and the 13th of Richard II. chap. 13, prohibiting all from hunting who had not 40*s.* yearly. It will be remembered, that, in the ordinances issued by the king in council, and afterwards confirmed in Parliament, respecting the elections in the boroughs of Leicester and Northampton, that provisions borrowed from this statute and the same sources, were applied to those places. Hen. VI.
1389.

The 10th chapter of the same year, relative to process against persons indicted, complains that indictments had been found in *foreign counties* in which the parties were not *conversant or dwelling*:—so that it is obvious, from this and the preceding statute, that all rights and duties, as well as responsibility for offences, were confined to the places where the parties actually *dwelt*, or in the language of the laws, “were conversant.” Cap. 10.

In an act relative to the cognizance, and jurisdiction of franchises, the mayors, bailiffs, citizens, burgesses and commonalties, are mentioned; but there is *no* reference to corporations, nor to any corporate bodies or name, unless, contrary to the position which we have already established by so many authorities, it should be still insisted that the word “commonalty” ought to be so applied. Cap. 26.
Common-
alties.

But it seems hardly possible to find a stronger instance to establish, that this “*term*” had not a corporate signification;—but that the inhabitants were the persons intended to be described—than in a statute relative to Tewkesbury, (a place generally considered to be a corporation,) in which a remedy is provided for the *inhabitants* against the people in the Forest of Dean; who, although they never were incorporated, nor is there any pretence for supposing that they had ever been so, are described under the word “commonalty”—and are spoken of in conjunction with the hundreds. And in a subsequent part of the statute, it is expressly said, that they are not incorporated commonalties (commonalties corporatz.)* Cap. 27.

* Ruff head's Statutes at Large, vol. ix. App. p. 64.

Hen. VI. The burgesses of Dorchester have their right of weighing within 12 miles reserved to them, notwithstanding the 8th of Henry VI. chap. 5.

1430.
Cap. 6.

Sheriff's
tourn

In the ninth year of Henry VI.* there is a statute relative to the extortion of the *sheriff* of *Hereford* in his *tourn*, which complains that the sheriff had taken indictments and inquests in his tourn, and fines against persons for not coming to it, to the oppression of the people; and he is prohibited from doing those acts for the future.

This statute clearly proves that the sheriffs' tourns were in full practice at this period; and the act was revived two years afterwards.

1431.
Cap. 2.
Choosers
of knights
of the shire

The choosers of knights for Parliament, by the second chapter of the 10th Henry VI., are required to be people *dwelling* and *resiant* in the same counties, whereof every one should have freehold to the value of 40s. by the year at the least, above all charges.

The origin of the freehold qualification we have before stated; but the general class of voters is here distinctly defined to be "*people dwelling and resiant within the county.*" And the same would have been the description of the voters if they had been living in a borough:—namely, the *resiants*, in each of the cases; owing suit to the king's court in the *county*, i. e. the *sheriff's tourn*—and in the *borough*, to the *leet*.

Tourn.
Leet.

1432.
Cap. 8.

The statutes with respect to weights and measures were confirmed in the 11th of Henry VI.; and cities and boroughs, with their liberties and franchises, are there mentioned; but no allusion is made to corporations or corporate bodies.

1436.
Cap. 5.
Inhabitants

The statute relative to jurors in this year, limits them to persons *inhabiting* within the bailiwick, unless there are not sufficient persons *inhabiting* within the *counties*; repeating also the freehold qualification, and increasing it to the extent of 20l.

Cap. 6.

Guilds.

In this year a statute was enacted, for the purpose of placing a restraint upon the unlawful orders made by masters of guilds, fraternities, and other companies, which confirms the

* Ruff head's Statutes at Large, vol. ix. App. p. 69.

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view we have already taken of those bodies; and strongly supports the inference that they were distinct from the municipal government of the place—and had, in fact, nothing to do with the right of burgess-ship, although it often happened that the burgesses were also members of the guild or fraternity established within their burgh.

Hen. VI.
Guilds.

This statute speaks of them as *incorporated* companies in different parts of the realm; and recites, that they had, by colour of rule and government, and other terms, in general words granted to them by the charters of former kings, made amongst themselves many disloyal and unreasonable ordinances respecting those things—the cognizance, punishment, and correction of which belonged solely to the king, the lords of franchises, and other persons, to their disherison, and to the common damage of the people. It then enacts, that the masters, guardians, and men of every such guild, fraternity, or incorporate company, should record their charters before the justices of the peace in counties, or before the chief governor of cities, boroughs, or towns where such guilds are. And prohibits them from making any ordinances unless they are approved of by such justices of the peace or chief governors, and recorded before them—under pain of forfeiture of all powers in their charters to make ordinances, and also of a fine.

These latter provisions are decisive to show, that these guilds formed no part of the municipal government of the places in which they were—because they were in fact put under their surveillance, which is of course inconsistent with their identity.

We have stated above, that these guilds and fraternities were incorporated; but this assertion should be taken with some qualification, or at least with due regard to the gradual manner by which they acquired corporate powers—first, by the grants of perpetual succession—and subsequently, by express charters of incorporation. And the successive periods at which these several grants were made,

Hen. VI. are worthy of observation. This will be best established by the following concise enumeration:—

Com-
munities.

In the 17th of Richard II., the mercers of London had a grant, that they should be one perpetual community.*

In the 22nd of Richard II., a community is mentioned for the management of the new bridge at Rochester.†

The first of Henry IV., the warden and 12 minor canons of St. Paul's have a grant of lands made to them in mortmain.‡

In the 11th of Henry IV., the proctors and vicars of the church of the blessed Mary, of Salisbury, have also a grant.§

And in the 13th of Henry IV., there is a charter with extensive liberties to the college of Foderinghey, in Northamptonshire.||

In none of these does any term of incorporation appear, either in the grant itself, or in the margin, although they are entered as incorporations in the index.

In the first year of Henry V., the college of the vicars of the blessed Peter, of York, have a grant, which expressly incorporates them, but there is no entry of the incorporation in the margin.¶

In the 8th of Henry VI., the men of the mystery of the mercers of York obtained a charter, but it does not incorporate them.**

In the same year, the warden or dean of the college of St. George, in the castle of Windsor, and the wardens of the mystery of grocers, in London, have similar grants, but without any words of incorporation; although, in each of these instances, they are entered in the index as incorporated.††

In the 11th of Henry VI., only seven years before the charter of incorporation to Hull, we find a grant of liberties to the fishmongers of London, which is stated in

* Rot. Pat. 17 Ric. II. p. 2, m. 4.

† Rot. Pat. 22 Ric. II. Par. 2, m. 31.

‡ Rot. Pat. 1 Hen. IV. p. 5, m. 26.

§ Rot. Pat. 11 Hen. IV. p. 1, m. 13.

|| Rot. Pat. 13 Hen. IV. m. 14.

¶ Rot. Pat. 1 Hen. V. m. 16.

** Rot. Pat. 8 Hen. VI. p. 1, m. 30.

†† Rot. Pat. 8 Hen. VI. p. 2, m. 24.

the margin, for the first time on these rolls, to be a corporation, but the grant itself does not contain that term—although they are made one body and a perpetual commonalty.* Hen. VI.

In the 15th of Henry VI., the vintners of London,† and in the 16th of Henry VI., the brewers also of the same place obtained grants, that they should be bodies, and have one perpetual community;‡ but there are no words of incorporation, either in the body of the instruments or the margin. 1437.

Thus, previous to the 18th of Henry VI., in which the first charter of incorporation to a municipal body was granted to Kingston-upon-Hull, there is only one instance of words of incorporation introduced, even into the grants to colleges, guilds, or fraternities: and only one where that term is introduced into the margin of the Patent Rolls; but the compilers of the indexes, misled by the modern notions of incorporations, have generally inserted them all in the index, as coming under that denomination.

It was but two years after this period, that the charter of incorporation to Kingston-upon-Hull was granted; and even at that time, the use of this word in its artificial sense was not general. We find it also used at the same period in its natural sense:—at least as we had it so applied in the statutes of the last reign, in the case of Lincoln. In the statute of the 18th year of this same reign, respecting a qualification for a justice of the peace, there is a provision, that the statute shall not extend to cities, towns, or boroughs, which shall be incorporate of themselves. And in the case of Plymouth,§ in the same year, it is applied in its direct natural sense, as descriptive of the local incorporation of two decennas with a borough. Incorporations.
Hull.

1439.

The next chapter in this reign authorizes all religious and secular persons to make their attorneys—the religious per- Ecclesiastical Bo-
dies.
sons under the common seal, and the secular persons under

* Rot. Pat. 11 Hen. VI. p. 2, m. 2.

† Rot. Pat. 16 Hen. VI. m. 1.

‡ Rot. Pat. 15 Hen. VI. m. 2.

§ Rot. Parl. 18 Hen. VI.

Hen. VI. their seals of their house—and to plead in all pleas in every hundred and wapentake.

Cap. 4. The 4th chapter in the 18th of Henry VI., relative to merchant aliens, speaks of mayors of cities and towns, but mentions nothing of corporations. The next chapter, relative to the collection of quinzimes and dismes, is to the same effect.

1441.
Cap. 8.
Chief
Pledge. In the 8th chapter of the 20th of Henry VI., respecting purveyors, the constable, tithing-men, and *chief pledge*, are mentioned. So that those officers, whose existence we have seen in the instances of Yarmouth and Lynn, were clearly continued to this time.

1442.
Cap. 10.
Guilds. The observations we have before made respecting guilds, are again confirmed by a statute of this date; and the distinction between them and the municipal government of the place, brought down to this period; this statute making provisions for the appointment of guardians or wardens of the worsted weavers of Norwich, for the purpose of correcting abuses in their trade, directs that they shall appear before the mayor of the city; and be sworn before him, to make due search for worsteds within the city and the county; and all acts contrary to that statute within the *city* were to be heard before the mayor; and those within the *county* before the justices.*

1444.
Cap. 10.
Wages of
members. In the statute of the 23d of Henry VI., relative to the levying of wages of knights of Parliament, they are directed to be assessed by the constables of the counties, and the bailiffs of the hundreds or wapentakes, in villages and towns within the hundreds:—but there is no mention, as there ought not to have been, of the cities or boroughs:—because they paid their own members, and were of course most reasonably exempted from those of the county. And by virtue of their separate and exclusive jurisdiction, they were privileged for this purpose from the interference of the officers of the counties, as we have shown to be the case from the

* See also 23 Hen. VI. c. 3. The separate jurisdictions of the *city* and *county*, are here distinctly marked.

earliest periods of our history, as the result of the very nature of the institution of boroughs. Hen. VI.

In the act relative to the qualification of knights for the shire, which recites the statute of the first of Henry V., requiring the members for cities and boroughs to be chosen from men, citizens and burgesses, *residing—abiding—and free—* Cap. 14. it is stated, that the citizens and burgesses *had always*, in cities and boroughs, been chosen by citizens and burgesses, and no other, and to the sheriffs of the counties returned; but that the sheriffs, for their singular avail and lucre, had not made due elections of the knights, and sometimes no return of them, or the citizens and burgesses; and provides, that the former statutes should be kept in all points, and that every sheriff should deliver, without fraud, a sufficient precept to every mayor and bailiff, to make their due elections and return of the persons really elected, under a severe penalty.

In the 25th of Henry VI., the statute respecting Welshmen provides, amongst other things, that the king's *villains* in North Wales should be constrained to such labour as they have done before—establishing, that the same doctrine of villainage, as practised in England, prevailed in the principality of Wales. 1447.

In the 29th year of this reign, a statute was passed for the purpose of declaring void all letters patent granted to certain citizens of York, to exempt them from the *offices* of mayor, sheriff, chamberlain, collectors of dismes and quinzimes, and *citizens to Parliament*.* 1450.
Cap. 3. And it ordained, that any citizen who should purchase any such letters patent, should forfeit a penalty of 40*l*.

This statute, speaking of charters of exemption from certain offices which had been obtained by some of the citizens of York from the king, but which were thereby declared to be void, affords a strong reason for thinking, that the being a citizen or burgess was not at this time considered a privilege altogether profitable to the possessor of it, for the situa-

* Here the attending as a representative in Parliament is properly treated as an office or duty.

Hen. VI. tion was charged with many duties, and subject to many liabilities.

It appears also, that about this time the king had granted many letters patent, which were afterwards annulled by Parliament.

Thus the statute 31 Henry VI. chap. 5, declares, the charters for certain offices of the aulnage for term of life and years, should be void.

The probability is, that in these disturbed times, the king granted these charters to secure the favour of those who were the objects of his bounty; but that upon the inconveniences resulting from them being manifest, Parliament required the repeal of them.

1455.
Cap. 2.

From the language used in a statute of this date, it appears that the same expressions which we have found in the early charters, were continued in use even in the most solemn acts, for the purpose of describing those persons who were to be the objects of a grant, or were the subjects of legislation.

Inha-
bitants.

Thus this statute, speaking of the people of the county palatine of Lancaster, describes them as "the humble and faithful lieges and subjects of the king, *inhabiting* within the county palatine;" and of the people generally, "as those lieges *inhabiting* in the realm of England, and of the same county."

Sec. 2. By the second section, persons *not inhabiting* within the county are described by the name (so commonly occurring in ancient charters, and in the records of boroughs about this time) of "*foreigners*;" and afterwards the act speaks generally of "the liege people, as well within the said county as without," in the same manner as we have before seen was often done in the ancient charters, without any further description of them, as inhabitants or otherwise.

Sheriff's
Tourns.

From the same statute it appears, that the *sheriff's tourns* were then in the full exercise of all their powers; and the persons over whom they had jurisdiction are referred to by the words, "*inhabiting or conversant* within the county;" the latter word being probably borrowed from some of the previous statutes.

Having now gone through the statutes of this reign, it Hen. VI. should be observed, that although some corporations were then well known—as those of the ecclesiastics—and some mentioned in the acts observed upon, as guilds, fraternities and other incorporated companies:—no word of incorporation, or of that import (except the word “commonalty” may still be thought to have that effect), has been found to be applied to the body of the people in any city, borough or town.

Common-
alty.

It has, indeed, been shown, from one of the statutes relative to Tewkesbury, that the word “commonalty” was not used with reference to the burgesses of that place, who are now clearly incorporated;—but was so used with respect to the commonalty of the Forest of Dean, though never incorporated.

As far therefore as the statutes explain the subject of our inquiry, it seems, that in this reign there is no reason for thinking that the cities, boroughs, or towns were generally incorporated; but from the observations made above, a strong inference arises to the contrary: particularly as King Henry VI. granted charters of incorporation towards the close of his reign to some boroughs, clearly as a novelty: and therefore the speaking of them as corporations had not become so general as to have been at that time introduced into the language of the legislature; though it will be seen, that in the next reign of Edward IV., statutes passed by him speak of charters of incorporation granted to towns and boroughs; of which we shall have occasion to speak in our next chapter.

In our observations upon the statutes at this period, we have already cursorily remarked upon some of the documents relative to London—as the grant to the mystery of the grocers of London. We should, however, observe, that the grant is made to the “freemen of that mystery,” in conformity with the position we before adopted, that freemen only could belong to trading bodies; for they alone, and not villains, were capable of trading. The being free was the necessary precedent qualification for a person belonging to such a

London.
1428.

Mystery
of the
Grocers.
Freemen.

Hen. VI. company; but the admission to it did not, as is generally assumed, make a person free: but the admission of the party is evidence that he was before a free man. This is the proper view to be taken of this grant, which describes the grantees as the *freemen* of the mystery. It gives them those powers which in modern times are supposed to be the proper characteristics of corporations—that of being a body and perpetual commonalty; and to choose yearly, from among themselves, three wardens, to supervise, rule, and govern the mystery and commonalty aforesaid, and all the members and business thereof; that they might have perpetual succession, and a common seal; and be capable of holding lands, &c.; and to plead and be impleaded, by the name of “the Wardens of the Commonalty of the Mystery of Grocers of London;” that they might acquire lands, &c. within the city of London and the suburbs thereof, which were held of the king, to the value of twenty marks per annum, towards the support, as well of the poor men of the commonalty, as of a chaplain, &c.—notwithstanding the statute of mortmain, or that the lands were held of the king in *free burgage, as the whole city of London was held*.

Still there were in this charter no words of incorporation. And it must be remembered, that although cities and boroughs were, for the purpose of municipal government—for the discharge of public duties—and with respect to the liability to public charges, entitled to act as aggregate bodies from the earliest periods of our history—which we have established from the numerous instances we have cited, as well as the clear illustrations of Madox, confirmed by his many examples—yet such bodies as the grocers, vintners, or goldsmiths of any place, being only a part of the inhabitants, had no such right of acting as aggregate bodies, unless they were authorized by the crown; and therefore they were obliged to obtain such charters, enabling them to act as aggregate bodies—giving them perpetual succession—and a general name—which they did not previously possess, but all of which the “commonalties of counties” and the “commonalties of cities and boroughs” enjoyed, by the

principles of the common law, and as it were by the very Hen. VI. necessity of their separate existence.

This distinction between the communities existing by the common law, and those artificial bodies subsequently created being overlooked, the principles of the latter class of aggregate bodies were inadvertently applied to the former; and hence arose the imaginary and erroneous necessity for having cities and boroughs incorporated, which was brought into operation about the middle of this reign.

A statute also of this date* confirms to the citizens of London their custom of taking *apprentices*, according, as is said, to their immemorial usage†—namely, that each person who was not of *villain estate or condition*, but of *free estate and condition*, might put himself, his son or daughter, an apprentice to any *freeman* of the same city, to learn his art or mystery. And that every *freeman* of the said city might take such person, or his son or daughter, notwithstanding the statute of the 7th of Henry IV. chap. 17.

1429.
Cap. 11.
Appren-
tices.

Appren-
tices.

In this statute, the “*inhabitants*” are spoken of as the persons who would be injured, by any restraint upon the ancient right of the *freemen* of the city to take such *apprentices*; and the persons petitioning Parliament speak of themselves as the *citizens* of London.

In the 17th section of the first of Edward VI.,‡ it is provided, that if any person adjudged under this statute to be an *apprentice*, servant, or slave, shall be the ward, *bondman* or *neif* of another, they shall be discharged of that slavery or other servitude.

Here we have the *free* men clearly contradistinguished *Freemen*. from the *villain*:—and the term “freeman,” in that sense, expressly applied to the freemen of London; which, coupled with what we have before seen upon that subject, and considering the date of this statute, leaves no reasonable doubt that the term always ought to have been so applied.

It must also be observed, that the freemen are designated according to the old language, to which we have before

* Ruffhead's Statutes at Large, vol. ix. App. p. 6. † Rot. Parl. n. 20, p. 354.

‡ Ruffhead's Statutes at Large, vol. ix. App. p. 144.

Hen. VI. frequently referred, as "of the city" of London—that is, belonging to the city of London, and not according to the modern language—the freemen of any particular art or mystery. With reference to these apprentices, the doctrine of *freedom*, *neifty*, and *bondage*, appears to have been in full force as late as the reign of Edward VI.

1444. The king, in the 24th year of his reign, also granted a charter to the *citizens*, giving them all wastes, streets, ways, common soils, purprestures, and improvements in the city and suburbs, and in the waters of the Thames within the limits of the city. This grant was confirmed, with the consent of Parliament, in the 20th of Henry VII., and by subsequent charters. And upon the Parliament Roll of the 1439. 18th of Henry VI., there is a document relative to the conservancy of the Thames and Medway.*

These latter documents afford nothing material to our present inquiry, but it was thought proper not to pass them over without notice, which must also be our apology for inserting the following extract from the Parliament Rolls, respecting the hanse merchants, and the appointment of their aldermen; which it seems the mayor and citizens had arbitrarily refused to assign.

1425. Hanse merchants complain, that notwithstanding the charter granting to them, that they should have an *alderman* of the city of London, assigned them as a judge in all suits; yet they had been for the last seven years without one, because the mayor, aldermen, and sheriffs, would not assign them.†

An alderman is then appointed.

UNIVERSITY AND CITY OF OXFORD.

- With respect to the city of Oxford, there is every reason to believe, that it continued in the same state, as it had in preceding reigns, excepting as far as the university had obtained a participation in its privileges, or a concurrency in its jurisdiction; for there was at this period, a charter of confirmation, containing all the former grants, by *inspeximus*.

* Pet. Parl. p. 34.

† Pet. Parl. m. 4, p. 302.

It is clear, however, that the university had at this time Hen. VI. acquired a jurisdiction, which it claimed by prescription; how justifiably, the former documents will have established: but in the 9th year of Henry VI., it appears, from a return to a habeas corpus, that the chancellor of the university, claimed to be a guardian of the peace, as well by prescription as by charter.* And the mayor and bailiffs of Oxford, asserted their right to the cognizance of pleas, in the third year of this reign.†

We have ascertained from the statutes, the provisions which were made with respect to the Irish, who had created disturbances in the neighbourhood of Oxford.

The king, in the 37th year of this reign, granted and 1458. confirmed to the chancellor of the University of Cambridge, power to inquire, every year, by the oaths of *good men of the town and county* of Cambridge, what nuisances existed, and to amerce those who were culpable; and that the chancellor should have all the amercements.

With respect to *Bristol*, we find, that in the commencement of this reign, the king confirmed its former charters; Bristol.
1426. and that in this year, there was a petition from the citizens to the Parliament, upon which proceedings were had with reference to its existence as a county of itself, separate from those of Somerset and Gloucester. As it is peculiar, as far as regards Bristol, and also as to the effect produced by making a city a corporation of itself, it may be material to extract the important parts. It is as follows:—

The burgesses of Bristol pray the commons to consider, that whereas King Edward III. (by the charter which we have before given), in the 47th year of his reign, granted to the burgesses of Bristol, their heirs and successors, that the town should be a county of itself; and that it should be charged to send to the Parliament only two men, who as knights of the county of Bristol, as well as burgesses of the town and borough of Bristol, for the same county, town, and borough, in such Parliaments, should be bound to answer; and

* Year Book, 9 Hen. VI., fol. 44. † Year Book, 3 Hen. VI., fol. 10.

Hen. VI. which charter, with all the grants and liberties therein contained, in the Parliament of the said King Edward next after the granting thereof, was ratified and confirmed by authority of the same Parliament. After the making of which letters patent, two men have answered by the authority of the same, both as knights for the county of Bristol, and as burgesses for the town and borough; and so it is, that a writ issues to the sheriff of the county of Bristol, to elect two burgesses, by the name of burgesses only, for the town of Bristol, against the liberties and franchises aforesaid; by virtue of which writ, the sheriff returned to this present Parliament, two, as burgesses of the town of Bristol only, so that they could not be received to appear and answer as knights for the county of Bristol, as well as burgesses for the town and borough, to the disinheriting of all the burgesses, *inhabitants* within the county of Bristol, of their liberties and franchises aforesaid. And thereupon the burgesses pray the order, by authority of this present Parliament, that the two burgesses should appear and answer for the county of Bristol, as knights—and for the town and borough, as burgesses, according to the liberties and franchises aforesaid; and that thenceforth, they should have writs issued to the sheriff of the county of Bristol, to elect two men, who as knights for the county of Bristol, as well as burgesses for the town and borough, in such Parliaments, should answer according to the liberties and franchises aforesaid; notwithstanding the return to this present Parliament, and the appearance thereon, contrary to such liberties and franchises. To which petition, the king answered, that by the advice of the lords spiritual and temporal, and the request of the commons, he willed and granted, that neither from the writ in the petition mentioned, nor the return thereupon, nor the appearance of the burgesses of the town of Bristol in the Parliament, by virtue of such writ, should any prejudice happen to the burgesses of the same town, against the form of this charter.

From this document, it appears, that notwithstanding the grant to Bristol to be a county of itself, was as early as the

reign of Edward III., yet the practical effect of such a grant—Hen. VI.
 being a novelty introduced into the constitution—had not been
 fully developed, even after so long a lapse of time. And the
 sheriff having acted as it would appear, strictly in conformity
 with his duty, in making a return to Parliament, in accordance
 with the former practice, it became necessary to appeal to the
 executive and the Parliament, to relieve the members—the
 sheriffs—and the citizens from the predicament in which they
 were placed; but the king, in answer to the petition, does
 nothing more than declare, in effect, that their privileges,
 under the charter of Edward III., should not be affected by the
 precedent which had been established by the last writ and
 return—leaving the real constitutional difficulty, as to the
 effect produced by the charter of Edward III., undefined and
 without a remedy; in which state, it has continued to the
 present day, both with respect to Bristol and many other
 places; in none of which has it been defined, whether by such
 a change, the statute of Henry VI., as to county elections, to
 which we have referred, would apply to such places; and whe-
 ther the election ought to be by the 40s. freeholders, as for a
 county: or whether the old borough constituency ought to con-
 tinue, and the election be by the burgesses. In most of the
 places similarly circumstanced with Bristol, a great confusion
 and uncertainty in this respect has prevailed; and nothing has
 been definitively settled:—both the one class of voters and the
 other having occasionally insisted upon their respective rights.
 Some attempts have been made to correct or reconcile these
 anomalies:—but as none of them have been founded upon a
 correct investigation of the cause—progress—and principle
 of the real difficulty, the suggested remedies were chiefly
 unsuccessful.

As a proof of the strange inconsistency of the burgesses
 of Bristol, they claimed in their petition, that the burgesses
 returned to Parliament should, under the charter of Edward
 III., be considered as knights for the county of Bristol;
 yet nevertheless their election in the 14th of Henry VI.,
 was by the unanimous consent of the mayor and com-
 monalty.

1436.

Hen. VI. Some attempt is said to have been made, in the 25th of Henry VI., to meet the difficulties of the case by considerable additions to the Parliamentary writ, and the returns; but, for the reasons we have given before, this effort was also abortive, and the matter continued till the Reform Act to be involved in the same obscurity.

1455. As to their municipal elections, in the 33d of Henry VI., the mayor and ten others, with all the notable persons of the whole common council of the town of Bristol, assembled in their council house, and by their right, discreet, and sad advisement, chose Richard Hallow to be mayor of Bristol during the then next year; three other persons for the election of sheriffs; and two persons for the office of bailiffs.

NEWCASTLE-UPON-TYNE.

1423. The mayor, sheriffs, and commonalty of *Newcastle-upon-Tyne*, which we have seen in the reign of Henry IV. was made a county of itself, (but not incorporated,) at this time obtained a grant of certain customs; and in the 11th of Henry VI., in consideration of the distresses and burdens which had fallen upon the mayor and burgesses—by losses in shipping,—the desolation of the adjacent country,—and approaching war with the Scots—and the great scarcity of the *inhabitants* occasioned by the pestilence—they obtained a remission of all taxes—talliaiges—tenths—and fifteenths then granted.

1444. Notwithstanding the introduction of the word “successors,” which we have seen in the last five reigns, there is in the 22d of Henry VI., a grant to the mayor and burgesses of Newcastle and their *heirs*, that their town should be free from the jurisdiction of the constable, marshal, admiral, and the warden of the marches; and that all their processes should be served by their own officers.

This grant to the burgesses and their *heirs*, as they had never been incorporated, is material to show, that notwithstanding the use of the term “successors,” the doctrine of municipal incorporation had not then taken root.

1445. In the 24th of Henry VI. an inquisition appears respect-

ing Newcastle-upon-Tyne:—by which a jury, upon their Hen. VI. oaths, found, that from time beyond the memory of man, the town of Newcastle-upon-Tyne, had held of the king and his predecessors, as burgesses of the town (when there was no mayor,) and as mayor and burgesses of the town (when there was a mayor,) the town and water of Tyne, and the soil of the water of Tyne, wherever it was covered, from a place called Sparrow-hawk in the Sea, unto a place called Hedwin-Streams: and that the same, with the appurtenances, were parcel of the liberties and free customs of the town; and were held under a fee-farm, saving the king's rents, prizes and assessments in the port* of the town. They then find and set forth King's John's charter and confirmation; and divers other customs and privileges belonging to the town.

It appears that this inquisition, notwithstanding the grants of former charters, liberties, and franchises to the town are specified in it, does not mention its being a corporation, or refer to any corporate privileges. And it was not until the 7th of Edward VI. that the note occurs in the Year Book, Corporations. stating, that it had been decided, “that a grant to burgesses, “&c. rendering rent, &c. made them for that purpose only “a corporation, as long as the rent remained.”

Notwithstanding the observations we have before made Members. with respect to Bristol, we find that Newcastle also, which had been made a county of itself, returned its burgesses to Parliament, not as a county under the statute of Henry VI., 1447. but as a borough; for in the 25th of Henry VI., the indenture of return was made between the sheriff, the mayor, and 34 other persons, who are described as the good men—*probos homines*—and they return two burgesses to act for the commonalty of the town; and the indenture is said to be made in the full county court of the town. A more anomalous instrument can hardly be conceived.

In the 32nd year of this reign, there is an order by Parliament to levy 20*l.* upon the *inhabitants* of Newcastle-upon- 1454.

* See the great case of the Banne, Davies' Rep. p. 149.

Hen. VI. Tyne, which obviously could only be enforced upon the
 Scot and *inhabitant householders paying scot and lot.*
 Lot.

The last document in this reign relative to Newcastle-upon-Tyne, grants the conservatorship* of the river, between the same bounds as the grant of the 24th of Henry VI. gave them the soil.

Dorchester.
 1430.

The Rolls of Parliament supply us with a petition from the burgesses of *Dorchester*,† reciting, that they had held the borough at farm for term of years, at an annual rent; and the king, in consequence of the return to a writ of *ad quod damnum* to the burgesses, granted to them the borough at fee-farm, rendering annually a fee-farm rent.

Grimesby.
 1439.

The town of *Grimesby*‡ was also granted at fee-farm to the mayor and *good men* of Grimesby; that they might have return of writs; plead and be impleaded; and that they should not be put in *foreign* juries or assises.

Spelman, followed by many other authors, asserts that
 Boroughs. boroughs were walled towns—many examples might be cited
 Poole. to disprove this doctrine—Poole affords a distinct instance upon the point.

It was a borough before the time of legal memory, as appears by the charter granted to the burgesses in the reign of Richard I.; and it returned burgesses to Parliament from the 14th of Edward III.; yet it was not till the reign of Henry VI. that it was fortified, as appears from the following document.

1433.

By a charter of this date, the king recites, that in consequence of the insufficiency and insecurity of the port of *Melcomb*, as to the merchants resorting thither with their merchandises, from the scarcity of the *inhabitants*, and the great multitude of people who inhabited the town and port of *Poole*; that the port was sufficient and secure for ships to resort there; and that the mayor and burgesses of Poole proposed to wall, embattle, and fortify the town and port, and parts adjacent. The king, with the

* See also Charters of London. † Rot. Pat. m. 4. p. 3. 1 Pet. MS. 168.

‡ Rot. Pat. m. 20, p. 2. 1 Pet. MS. 318.

advice of the lords spiritual and temporal, gave licence to Hen. VI. the mayor and burgesses to fortify the town and port of Poole; and that the port of Melcomb, after the feast of St. Mary, should not be a port, but a creek; and then the port of Poole should be one of the king's ports.

This licence to wall, intrench, and fortify the town, was by several statutes rendered necessary before any fortifications could be erected. It is obvious that this charter in no respects affects the questions, either as to the borough or the burgesses, but leaves them as they were before. But is material only, as affording an instance to show, that what has been said by Dr. Brady and others, as to boroughs being trading and walled towns, is inaccurate; inasmuch as that here there is a grant of a free port, which is connected with trade, and of a licence to wall a town, which had been a borough at least 250 years before. That a market also did Market. not make it a borough, seems to be confirmed by the fact—that in the 27th year of this reign, a market and two fairs were 1448. granted to the mayor, bailiffs, burgesses, and *inhabitants* of Poole—which were confirmed in Parliament four years 1452. afterwards, unless they were to the prejudice of the neighbouring market and fairs. And it was also granted, that the Fairs. mayor, bailiffs, burgesses, and *inhabitants*, their heirs and successors, might hold pleas during the fairs, &c., in the court of the mayor, bailiffs, burgesses, and *inhabitants*, before the mayor and bailiffs:—so that no county justice, escheator, sheriff, steward, or marshal, coroner, clerk of the market, or other bailiff or minister, should interfere. And that all persons coming to, remaining there, and returning therefrom, should be free from arrests and disturbances of the said officers.

It does not appear why the bailiffs are introduced here, or how they had been created.* “Præpositus” is the Latin term for bailiff; and till 1371, it appears that the head officer of the borough bore that name. It would therefore, in all probability, have been at some subsequent period,

* In the return, 1st of Mary, the bailiff's deputy is spoken of:—and from this date, there appears for some time to have been only one bailiff.

Hen. VI. between the charter of that date and this of 1452, that the appellation of "bailiffs" had been introduced. This grant is to the "*burgesses and inhabitants*"—a mode of expression which has raised so many doubts in the interpretation of other charters; but it seems here easily capable of the construction we have before placed upon that mode of expression.*

1439. The fee-farm of this borough was granted by Henry VI. to Henry Beaufort, bishop of Winchester.† From which it appears, that this borough was then in the hands of the crown. And Browne Willis states, that it became so on the death of Thomas de Montacute, the last possessor, who died without heirs.

Wells.
1422.

There was also a confirmation to *Wells*, at the beginning of this reign, of all its former liberties; but it is exactly the same as the former to this place:—and leaves the class and description of burgesses as they were before, with this addition, that it is a confirmation by Parliament, as that of Henry IV. is also said to be; and therefore all implication from any future charters of the crown, that the class of persons was changed, is excluded.—Because that which has been established by Parliament, can only be altered by the same authority:—and no future charter by the crown could change the class of burgesses: and there is no ground for saying, that any act of Parliament ever changed their description.

Rochester.
1438.

There is an entry on the Charter Rolls,‡ of a grant to *Rochester* of this date; but none such is mentioned in the *inspeximus* of the 5th of Charles I. It is however to be found on the roll, and confirms the charter of the 50th of Henry III. It was probably omitted because Edward IV. denied the title of Henry VI. to the crown, and called him, in his public documents, only king "de facto," and not "de jure;" and, therefore, would not perhaps recite his charters by *inspeximus*, except when compelled to do so by any particular circumstances.

* Rot. Cart. 30 Hen. VI. n. 25.

† Rot. Pat. 17 Hen. VI.

‡ Rot. Cart. n. 44.

CORPORATIONS.

We are now arrived, in our chronological series, at the period in which *incorporation* was first superinduced upon our municipal institutions, in the instance of Kingston-upon-Hull.

Hull.

We have previously referred to some documents relative to that place, and have seen that it had a charter granted to it as early as the reign of Edward I., making it a free borough, and the *men* free burgesses—with power, to them and their *heirs*, to devise their property—that they should have return of writs—that no sheriff or other officer should intronit—and the burgesses were not to plead or be impleaded out of the borough—they were to elect coroners from among themselves—and to have freedom from toll, and other customs, &c.—(and in the words of the Cinque Port charters,) “that all those who wished to enjoy those liberties, should be in guild and scot with the same burgesses.”—Edward II. confirmed this charter, and Edward III. granted to the burgesses, their heirs and successors, not only a confirmation of their former privileges, but also that they might hold their town at fee-farm—might elect yearly, from among themselves, one mayor and four bailiffs—and that they should not be impleaded out of the borough—with many other privileges.

The same king also again confirmed their charters in a subsequent part of his reign; as did also Richard II., Henry IV., and Henry V.

With respect to these charters, it is clearly obvious, that they did not incorporate the place, notwithstanding Mr. Corbett describes that of Nottingham as having that effect.

They also afford us the inference, that the grant at fee-farm was not essential to the creation of a borough; because Hull had been recognized as a borough for many years before it acquired that franchise.

That these charters did not incorporate the place, will most distinctly appear from the contrast, which cannot but

Hen. VI. be remarked, when those to which we have already referred, and two or three others at the commencement of this reign, are compared with the actual charter of incorporation in the 18th year of the same king.

1430. Thus—in the eighth year, there is a confirmation to the burgesses of Kingston,* containing, by *inspeximus*, the charters of Henry V., Henry IV., Richard II., Edward III., Edward II., and Edward I.

1432. Two years afterwards, the mayor, bailiffs, and burgesses of Hull,† petitioned Parliament for a confirmation of all their prior charters, but *say nothing of their being incorporated.*

In the same year, they accordingly obtained a charter, for the “*men of the town of Kingston*,” confirming all the previous charters we have mentioned, and the acts which had been done under them—particularly the power of making wills and holding pleas; but *still nothing is said of their being incorporated, or of their having or being entitled to any corporate privileges.*

It is not until seven years afterwards that the actual charter of incorporation is granted to Hull.

After a careful investigation of the charters of this period, it seems very difficult to account for this change in the language and objects of them, which is so marked and singular. No trace appears of it upon the Pipe Rolls, where in the 17th of Henry VI. there is an entry of 70*l.* due from the burgesses of Kingston for their fee-farm. And in a distinct roll, in the 18th of Henry VI., the sheriff of the county, in rendering his account, makes the same entry of 70*l.* due from the burgesses of Hull for their fee-farm; and the roll of the 19th of Henry VI. is to the same effect—so that there appears no mention of the incorporation upon the Pipe Rolls, which seems inexplicable; unless the payment of the fee-farm was, as we have observed before, entirely distinct from the rights of the borough, and the incorporation.

Before we proceed to give the incorporating charter to

* Rot. Pat. m. 12, p. 2.

† Pet. Parl. n. 11, p. 468.

Hull, it may be desirable to refer particularly to the Hen. VI. charters and patent rolls at the commencement of this reign.

The entry of the charters of this reign, in the calendar printed by the record commissioners, has been by some means or other involved in apparent confusion.*

The first 21 charters are stated to be between the first and 20th year of Henry VI., and are not in strict consecutive order, as the last is No. 29. And they do not occur upon the original roll in the order in which they are described to be in the calendar; but are entered according to their succession of dates.

The first charter actually occurring, is one of the 5th of Henry VI., and is numbered upon the calendar, 52—being a grant to Humphrey, Duke of Gloucester, and others, of a manor and free warren in Devonshire. After which many others succeed, not material to our present inquiry.

No. 44 is a charter to *Rochester*, and is entered under the *Rochester.* 16th of Henry VI.

It recites the charters before mentioned, of Henry III., 1265, as well as that disputes had arisen, respecting the rights and privileges of Rochester—and generally confirms the former grants, with other new privileges, establishing an *exclusive jurisdiction*. But it is *not a charter of incorporation*:—nor are there any words to that effect, nor relative to corporate powers.

The next municipal charter which occurs, is that of *Windsor*. *Windsor.* No. 39. This also is not a charter of incorporation. It recites the one we have before given of Edward III., and confirms many privileges, establishing its *exclusive jurisdiction*—but it *gives no corporate powers*.

The next municipal charter, in regular numerical succession, is No. 29. The one granted to *Kingston-upon-Hull*, *Kingston-upon-Hull.* in the 18th of Henry VI., which first uses terms of *incorporation*.

* The public would derive considerable advantage from having another edition of Calendars to the "Charter" and "Patent" Rolls—as those which were printed in 1803, make *no allusion to a considerable number* of important grants to towns and individuals that are inserted upon the original Rolls; and they are, in every respect, replete with *inaccuracies*.

Hen. VI. *ration*; and there is an entry to that effect, for the first time, in the calendar.

Patent
Rolls.

Such is the history of the Charter Roll to this period. Before we proceed to the charter itself, we will refer also to the Patent Rolls.

From the reign of Richard II., some few instances have occurred of the introduction of the term "*incorporatio*" upon the Index to the Calendar Roll; but, as we have shown, they are but rarely justified by the documents themselves—and in the instances in which they are so, they are cases of ecclesiastical bodies. But even upon the Patent Rolls the term is never applied to municipal corporations, until after the grant of the *incorporating* charter to Hull. The first instance which we can discover, is one incorporating Tenterden, in the 27th year of this reign.

Incorpo-
ration.

The charter to Hull does not, like those of former periods, commence with a recital or *inspeximus* of any former charters, though there had been many previously granted to this place; but it begins with rather a pompous recital of the king's good disposition to the place for services performed to him, immediately after which it *incorporates* the *mayor and burgesses*, giving to them the corporate powers subsequently so common, of suing and being sued, and of being capable in the law to purchase and hold lands by their corporate name.

It then separates Hull from the county of York, and makes it a county of itself, substituting a sheriff in the place of four bailiffs; directing that there should be a coroner and an escheator, with the customary powers. And that there should be 13 aldermen, one of whom should be mayor. With power to elect the mayor, and other annual officers and aldermen, from time to time, as any of them should die or depart from their office.

A common seal is mentioned in the charter as then existing and used; but there is no express grant of it, as has been usual in subsequent charters.

That the reader may have a full opportunity of comparing the frame and language of this charter, we insert it more at

length than the former documents. It is in substance—as far Hen. VI.
as is necessary to illustrate this point—as follows :

It recites, that for the special and inward affection which ~~the~~ ¹⁴³⁰
the king bore towards the town of Kingston-upon-Hull, and
to the mayor and *commonalty*, and in consideration of the
good behaviour and gratuitous service of the *burgesses* of
the town thitherto frequently performed, and of the great
labours and expences theretofore sustained by the *burgesses*
in their persons, ships and goods; and heartily desiring to
improve, increase, and relieve the town and burgesses in the
best way he was able; and being willing to provide for their
further advantage, he granted to the burgesses, their heirs
and successors, burgesses of the town, for ever, the liberties,
franchises, acquittances, and immunities following; that is to
say, that the town should be for ever *incorporated* of a mayor
and burgesses. Incorporated.

That the mayor, burgesses, and their successors, mayors
and burgesses of the town so incorporated, should be *one*
perpetual corporate commonalty in deed and name, by the Perpetual common-
name of “The mayor and burgesses of the said town;” alty.
and should have perpetual succession. That the mayor and Perpetual suc-
burgesses, and their successors, by the same name, should cession.
be persons able in the law to sue and defend all manner of Name.
pleas, suits, complaints, demands, and actions, real, personal, Capable.
and mixed, moved or to be moved, in whatsoever courts of
the king, his heirs, or of others whomsoever, &c. That in
the same they should be able to plead and be impleaded, Plead.
answer and be answered.

And further, that the mayor and burgesses of the town
aforesaid so incorporated, and their successors aforesaid,
should be persons able and capable in the law to purchase
lands, tenements, rents, services and possessions within their
town, and the liberty and precinct thereof; to have and to
hold to them and their successors for ever, the statute of not
putting lands and tenements in mortmain, or any other Mortmain.
ordinance or statute heretofore made to the contrary notwith-
standing; saving always to the king the services therefore due
and accustomed. That the town of Kingston-upon-Hull,

Hen. VI. and precincts thereof, in manner as they are bounded, within
 Severed. the body of the county of York, should *be severed* distinct,
 and in all things wholly exempt *from* the said *county* for
 ever, as well by land as by water. That the town of Kings-
 County of ton-upon-Hull, and the precinct thereof, should be a *county*
 itself. *of itself*, and not parcel of the county of York. That
 the town, and the precinct thereof, should be called the
 town of Kingston-upon-Hull for ever. That the burgesses,
 their heirs and successors, burgesses of the town, should for
 ever have within the town, and the precinct thereof, in
 manner as they are limited by metes and bounds, the liberties,
 privileges, and franchises following; that is to say, that as
 well every burgess of the town aforesaid who should be here-
 Mayor. after elected mayor of the town, should be elected in the
 same place, manner, and at the same time, as any burgess
 of the town hath theretofore been accustomed to be elected
 mayor.

Further, that as well every burgess of the town aforesaid
 hereafter to be elected mayor of the said town, and so
 soon as he should be so elected mayor, as the now mayor
 Escheator. of the town aforesaid, should himself henceforth be eschea-
 tor of the king and his heirs, in the town and precinct
 aforesaid, during the time any such burgess should con-
 tinue in the office of mayor.

That the burgesses, their heirs and successors, burgesses,
 for ever should have, in lieu of the four bailiffs of the town
 Sheriff. aforesaid, one sheriff in the town, precinct, and sheriffwick
 of the town, which sheriff should be elected and appointed
 in form following; that is to say, the said burgesses in lieu
 of the four bailiffs of the town aforesaid now being, should,
 on the morrow of the Holy Trinity next coming, elect from
 among themselves one burgess of the town to be sheriff of
 the town, which sheriff should have and occupy the office
 of sheriff of the town, until the Feast of St. Michael the
 Archangel next coming, and until another burgess of the
 town should be elected sheriff. That the sheriff should
 thenceforth be yearly elected and appointed in form follow-
 ing; that is to say, the burgesses in every year should, in

lieu of the four bailiffs of the town aforesaid, elect from among themselves one fit person to be sheriff of the town aforesaid, and the precinct thereof, in the same place, and at the same time, as any burgesses of the town have been heretofore accustomed to be elected, to be the four bailiffs. And that every burgess of the town to be yearly elected sheriff, as well on the said morrow of the Holy Trinity, as after the Feast of St. Michael, should, immediately after the election made of himself, in due form take his oath before the mayor of the town aforesaid for the time being, and should not go out of the town to take his oath; the name of which sheriff should be sent into chancery, yearly for ever, under the common seal of the town of Kingston-upon-Hull. That at no future time should there be in anywise any other escheator or sheriff in the town and precinct, unless from among the burgesses. And that the escheator and sheriff of the town, and their successors for ever, should have the same power, jurisdiction, authority, and liberty, and all other things whatsoever appurtenant to the offices of escheator and sheriff in the town and precinct, as other escheators and sheriffs may and should have elsewhere within the realm of England.

Hen. VI.

Oath.

That all writs and mandates which *have been* heretofore accustomed to be served by the sheriff of Yorkshire, immediately; or by the bailiffs of the town, by the return of the sheriff of Yorkshire, as directed by the said bailiffs on behalf of the king:—and all those writs and mandates which *ought* to be served by the sheriff of the county of York immediately, or by the bailiffs of the town, by the return of the sheriff of the county of York, as directed by the bailiffs on behalf of the king, if the sheriff of the town aforesaid had not been so made, should for ever after the morrow of the Holy Trinity, be demanded by and delivered to the sheriff of the town of Kingston-upon-Hull.

Writs.

That the sheriff of the town should continually in future hold his county court there on Monday monthly, in the same manner and form as other sheriffs elsewhere within the realm do hold their county courts:—or as other sheriffs

County Court.

- Hen. VI. elsewhere in the said realm should hold their county courts ; that the mayor and sheriff of the town, and their successors for ever, should in like manner hold their court daily ; and the sheriff of the town, and his successors, sheriffs of
- Profits.** the town, should have and receive the profits thereof, at all future times for ever, in manner as the bailiffs of the said town had theretofore been accustomed to hold their courts there, and to have and receive the profits thereof. And that the burgesses, their heirs and successors, should
- Pleas.** not plead or be impleaded out of the town concerning lands or tenements which they hold within the town and the liberty of the town ; nor concerning any trespass, covenant, contract, or other thing whatsoever done within the town, or the liberty and precinct thereof ; and if any of the burgesses, or other person, be willing to sue for any land or tenement, being within the town, and the liberty and precinct thereof, or to complain of any trespass done within the town, or the liberty and precinct thereof, he should prosecute his action, right or plaint, before the mayor and sheriff of the town. And if the suit cannot be determined before them, it should be determined at the suit of the plaintiff before the next justices in Eyre, and not out of the town ; or before some other justices, to be especially appointed thereto. That the mayor and sheriff of the town for the time being should hold for ever in the guildhall
- Pleas.** of the town all manner of pleas, suits, plaints and demands, and action, real, personal, and mixed whatsoever, moved, or to be moved, within the town and the liberty and precinct thereof ; and should have cognizance of all pleas of trespasses, covenants, and contracts whatsoever, howsoever made, happening, or arising within the town, and
- Profits.** the liberty and precinct thereof, with all manner of profits, howsoever arising, from such pleas, as fully, wholly, freely, and quietly, and in the same manner and form as the mayor and bailiffs of the town for the time being before the making of this charter, by virtue of divers charters and letters patent of the king's progenitors, late kings of England, thereof made and by him confirmed, had such cog-

nizance, or at any time had been accustomed to have such Hen. VI.
 cognizance, without the let or hindrance of the king, or his
 heirs, or of his justices, or of the steward or marshal of the
 household, or of the escheators, sheriffs, or other bailiffs
 or ministers of the king, or his heirs, so that neither the
 said steward nor marshal should in anywise intermeddle
 themselves concerning the cognizance of pleas, of such tres-
 passes and covenants, or contracts, arising within the town,
 and the liberty and precinct thereof, unless only concerning
 the trespasses, covenants, and contracts done in the king's
 household. And further, that the mayor and burgesses, Cogni-
zance.
 their heirs and successors, mayors and burgesses of the town,
 should ever have cognizance of all manner of pleas of assises,
 novel disseisin, and mort d'ancestor, concerning all manner
 of lands and tenements within the town, and the liberty and
 precinct thereof, as well before the justices of either bench,
 justices assigned to take the assises, and justices in Eyre, as
 before whatsoever other justices and ministers of the king,
 and taken before the mayor and sheriff of the town for the
 time being, in the guildhall of the town aforesaid, in manner
 as the mayor and burgesses have heretofore had and holden
 the same before the mayor and bailiffs of the town. And
 that no escheator, nor sheriff of the county of York, should Non-
intromit.
 in anywise enter, or presume to enter the town aforesaid, or
 the liberty or precinct thereof, to do or exercise their offices.
 And that the escheator and sheriff of the town of Kingston- Escheator
and sheriff.
 upon-Hull for the time being, might severally, in every year,
 make their profers and account before the treasurer and
 barons of the Exchequer, by their sufficient attorneys, thereto
 severally deputed, by letters patent signified under the com-
 mon seal of the town, concerning whatsoever affairs touching
 the offices of escheator and sheriff of the town, whereof they
 should be accountable; so that the aforesaid escheator and
 sheriff should not in any manner be personally compelled to
 come out of the town to account for any thing belonging to
 their offices.

The charter then provides for the oath of the escheator, Escheator.
 and for his being certified every year to the Exchequer.

Item. VI. Also, that the keepers of the peace, and the justices assigned to hear and determine felonies, trespasses, and other misdemeanours; and justices of labourers, servants, and artificers in the three ridings within the county of York, should not in anywise intermeddle themselves or himself, within the town, nor the liberty or precinct thereof. And that from time to time the burgesses should be able to elect from among them-

Aldermen. selves 13 aldermen, one of which said aldermen should always be elected to be mayor of the town; which aldermen so elected should continually be in such offices of aldermen of the town during their lives, unless they, or any of them, at their own special request, to be made to the residue of the burgesses of the town for the time being, or on account of any reasonable cause, should be removed from the office of alderman by the mayor of the town aforesaid, and the residue of the burgesses of the town for the time being; and that any such alderman dying, or in any manner departing or being removed from his office of alderman, the residue of the burgesses of the town for the time being, and their heirs and successors for ever, should have full power and authority to elect one other burgess from among themselves to be alderman of the town, in the room of him the alderman so dying, departing, or being removed; and so from time to time for ever, upon any such alderman of the town aforesaid dying, departing, or being removed in form aforesaid. And that they the mayor, and the 12 remaining aldermen of the town aforesaid, should be called the aldermen of the town for ever, and their heirs and successors aldermen of the town, to be elected in form aforesaid, for ever, so long as they should continue in such office of alderman, should be justices of the king, and his heirs, to keep the peace within the town. That the alderman of the town, or three or two of them, together with the

**Aldermen
Justices.**

mayor of the town, should have the full correction, punishment, power and authority, to recognize, inquire, hear and determine all matters and things, as well of all manner of trespasses, misprisions, and extortions, as of all manner of other causes, suits, and misdemeanors whatsoever happening or arising within the town, liberty and precinct thereof, as

fully and entirely as the keepers of the peace, and justices Hen. VI. assigned and to be assigned to hear and determine felonies, trespasses and other misdemeanours; and justices of servants, labourers, and artificers in the three ridings, or any parcel thereof, might or should thereafter have in any manner howsoever out of the town and liberty. And that the burgesses, their heirs and successors for ever, should have all manner of fines, issues, forfeitures and amerciaments to Fines. the justiciary of the peace, within the town, liberty, and precinct belonging, to be levied and received by their own proper ministers, in aid of the payment of their farm, and in support of the great charges daily incumbent on the said town, or happening and arising in the same. And that the aforesaid Forfeiture of victuals. mayor, sheriff, and burgesses of the town of Kingston-upon-Hull, and their heirs and successors aforesaid, for ever, should have the forfeiture of victuals, by the law of England howsoever to be forfeited: that is to say, of bread, wine, and ale, and of other things which do not belong to merchandise. And moreover, that the steward and marshal of the household of the king, and his heirs, and the clerk of the market Clerk of the market. of the household, should not, either in the presence or in the absence of the king, or his heirs, enter nor abide within the town aforesaid, or the liberty and precinct of the town, nor exercise their offices there, nor on any pretence inquire, or cause to be inquired of, any matters done or to be done, or happening or arising within the town aforesaid, or the liberty and precinct thereof; nor in any manner intermeddle themselves there, nor draw into plea any burgesses of the town aforesaid, or any persons *residing* within the town, or the liberty and precinct of the town, out of the town, for any matters hereafter in any manner happening or arising within the town, or the liberty and precinct of the same. And further, that the coroner of the town, and his successors, Coroner. for the time being, should be able to exercise his office, as well in the presence of the king as in his absence, in all things as any coroner within the town aforesaid hath at any time, before the date of these presents, been accustomed to exercise his office there. And also in all other matters here-

Hen. VI. after chancing, happening or arising within the town, and the liberty and precinct thereof, which in any manner appertain and belong to the office of coroner, and which, if they had chanced, happened, or arisen within any other county of England, ought to have been exercised, or done by the coroner of the county, as fully and freely as the same coroner of any other county of England exercises such office of coroner, and all other things touching the said office, without the let, impeachment, or hinderance of the king or his heirs, or other officers or ministers whatsoever; provided always, that both the escheator and sheriff of the town for the time being should render before the treasurer and barons, a true account of every thing within the town, and the liberty and precinct thereof, which they or he ought to account for to the king and his heirs, if the said town had not been *incorporated*, of such escheator and sheriff, and justices of the peace, to be elected and appointed from among the burgesses as aforesaid; except all manner of fines, issues, forfeitures, and amercements belonging to the justiciary of the peace, within the town, and the liberty and precinct thereof. Wherefore the king commanded, that the burgesses of the town aforesaid, their heirs and successors, might have, hold, and exercise all and singular such cognizances, franchises, liberties and immunities, and all other the premises, as they are above especially expressed, and may fully and freely enjoy and use the same for ever, without the impeachment, disturbance, or hinderance of the king, or his officers or ministers.

With respect to this charter it should be observed, that the term "*commonalty*" is not treated by itself as a corporate term, but that adjectives are joined with it, to give it that application; for the mayor and burgesses are declared to be "one perpetual corporate commonalty:" so that it would appear, that this term alone would not bear that import, without these additional words.

The great object of the charter appears to have been, in conformity with the doctrine we have before urged, to

exempt the borough from the jurisdiction of the county ; and Hen. VI.
 to separate it from the rest of Yorkshire, of which it is declared to be no longer a parcel. But having a sheriff, escheator, and coroner of its own, it was to be exempted from the interference of those officers of the county—which was the object at that time of most earnest anxiety.

It should be remarked, that although Hull is incorporated, the former charters, which we have before quoted, are confirmed ; and many of the acts to be done, and the duties to be executed, by the officers of the town and the burgesses, are directed to be performed in the manner theretofore accustomed : and consequently it cannot be assumed, that this charter made any essential difference in the constitution of the borough—though it gave additional capacities to the burgesses.

There is also another charter stated to have been granted to *Hull* of this date,* reciting that it had been incorporated of 13 aldermen, (as we have before seen it was,) and adds to the county of the town some other places in the neighbourhood, which it also expressly separates from the county of York. It grants two coroners instead of one, and also the power of electing an admiral ; and finally, gives some wells in the neighbourhood to the burgesses ; with power to bring the water to Hull. 1441.

The next municipal charter upon the rolls, is one to the “freemen” of *Kingston-upon-Thames*, their heirs and successors,† reciting all their previous charters, and granting a few additional but unimportant franchises—it is not however a charter of incorporation. Kingston-upon-Thames.

No. 15 is a charter of confirmation to *Dublin* ; and No. 8 is one of a similar nature to the city of *York*. Dublin.
York.

The next municipal charter is to *Bridgenorth*, which is entered upon the roll, from the 21st to the 24th of Henry VI., No. 2—but it is not one of incorporation. Bridgenorth.

The 6th charter on the same roll, is a grant to *Rochester*—to which the same observation applies. Rochester.

* Tickle's Hist. p. 103, in note.

† This charter is partially recited in the grant by Edward IV. to Kingston ; but the corporation have not the original in their possession.

Hen. VI. No. 15 is a charter to the borough of *Ipswich*—and is a
Ipswich. charter of incorporation. But before we proceed with its
 recital, it would be material to refer to the Parliament Rolls,
 and extract a previous charter granted to Plymouth, to which
 we have before referred in the reign of Henry IV.

PLYMOUTH.

The reader will remember, that the word “corporate” was before used in its primitive sense, upon the Parliament Rolls. We now find it applied in these records, in the 18th year of Henry VI., in a similar manner; in a petition, relative to the dismes and quindismes granted at that time; in which cities, shires, and boroughs are mentioned, and a city or borough is described as a “shire incorporated”—clearly referring to the case of Lincoln,* upon which we have before commented.

A few pages afterwards,† a petition is mentioned from the town of Plymouth, dated in the same year, praying that it might be a *corporation*; which, as we have observed before, was referred to the lords of the king’s council and the two chief judges of both benches, who were to make such provision therein as to them should seem necessary and behoveful. And after a small interval upon the roll,‡ there is a petition from the *men* of the town of Plymouth, to the following effect:—

1439. That the *town* of Sutton Pryour, and the *decenna* of Sutton Raf, and the *parcel and hamlet* of Sutton Vautort,—which *town, decenna, and parcel*, are commonly called Plymouth, and a certain parcel of the *decenna* of Compton, within the county of Devon, were situated so near the coasts of the sea, and that there was there so great a concourse of ships, as well of enemies as of others, in the port:—And that the *town, decenna, and parcel* aforesaid, had often, from defects of walls, been burnt and destroyed:—And moreover the *inhabitants* had been despoiled of their goods, both by night and day; and many of the *inhabitants* had been taken away

* Rot. Parl. 18 Hen. VI. m. 15, p. 5.

† Rot. Parl. m. 13, p. 9.

‡ Rot. Parl. m. 8, p. 18.

to foreign parts by such enemies, and there imprisoned, until they had paid ransom :—And other great evils had happened to the said *inhabitants*, and many others were apprehended for the future, unless seasonable remedy were speedily afforded, for the relief, fortification, and amendment of the place :—Upon the consideration of which premises, it was prayed, that the king, with the consent of the Parliament, for the resistance of the said enemies, and for the salvation of the said *town, decenna*, and *parcel*, and that the *inhabitants* of the same should be able to *reside* and *dwell* there more quietly and securely the sooner the said *town, decenna*, and *parcel*, should be enclosed and fortified :—It was prayed that the king would be pleased to grant, that the *town, decenna*, and *parcel*, should from thenceforth be a free borough—incorporated—of one mayor and one *perpetual community*, and for ever be called the borough of Plymouth. Hen. VI.

That the mayor and *commonalty* should be one perpetual body, in deed and name—should have a perpetual succession—and be called the mayor and *commonalty* of the borough of Plymouth. That they should be persons capable to take, for them, their heirs, and successors, in fee and perpetuity, for term of life or years, or in any other manner, lands, tenements, reversions, &c. That they might have a common seal, and, by the name of “the Mayor and Commonalty of Plymouth,” in all courts and actions might plead and be impleaded.

After which the bounds of the borough are defined with great particularity.

It is then prayed, that William Ketrick, one of the most honest and discreet *men* then *commorant* within the said bounds, should be made mayor ; and that one of themselves, most fit and proper for the purpose, should, by their sound discretions, be annually elected mayor. And if the said William Ketrick, or any of his successors, should *depart*, or govern the borough unjustly, then the *commonalty*, if they thought fit, should have power to remove him, and to elect another from themselves in his place. The mayor taking his oaths before the commonalty, and before the Prior of Ply-

Hen. VI. mouth, or his steward, if they should come before 11 o'clock—otherwise, before the *commonalty*.* And that the mayor and commonalty might be able, for the public good of the borough, to make and create *burgesses*.

That the mayor and *commonalty* might have and hold, to them, their heirs, and successors, all lands, tenements, mills, possessions, fairs, markets, courts, franchises, liberties, *views of frankpledge*, and all other profits and emoluments, temporal and secular, within the borough of Plymouth.

A reservation then occurs, that some tenements and lands belonging to the prior and convent, be excepted from the *jurisdiction* of the mayor and *commonalty*; and the petition proceeds at great length, for the purpose of securing the convent against any aggression upon the part of the mayor and commonalty. It provides also, that the prior and convent should not be liable to be burdened, with the *burgesses* and inhabitants, with any taxes, &c.

And in a subsequent part of the document it is stated, that the *town* of Sutton Pryour, the *decenna*, and *parcel*, were part of the hundred of Rouburgh.

Liberties. That the mayor and commonalty, their heirs and successors, should for ever have all laws, liberties, franchises, jurisdictions, powers, hereditaments, and other profits, which the abbot had, or ought to have, within the precincts of the borough, as in right of his church; that the mayor and com-

Court. monalty, their heirs, and successors, should have a court held monthly, before the mayor, in the guildhall of the borough. And that, in that court, all defects, excesses, trans-

View of Frankpledge. gressions, articles, *view of frankpledge*, and every other thing that should happen within the precincts of the borough, should be amended, corrected, or punished. And that all, who by reason of their lands, tenements, or possessions, within

Residence. the precincts, or by reason of their *residence* within the precincts, ought to do suit and service at the said court of the abbot, should for the future do that suit at the court of the

* This is the practice to the present day; and the mayor and commonalty wait till after the specified time for the arrival of the prior:—so long will ancient customs continue; and inveterate habit prevail more effectually than positive institutions.

mayor and commonalty. The king answered, "Let it be as desired by this petition;—provided it does not interfere with the property, courts, &c. of Sir John Cornewall." Hen. VI.

In this striking *incorporation* of a *town*, *decenna*, and *part of a hamlet*, for the purpose of incorporating them together, and separating the latter from the hundred of Rouburgh, to which it before belonged, we see first—the distinction between the *town* or *borough* of Plymouth, and the *decenna*, which was a part of the county at large. We also find that the *decennas* were then preserved and kept in full force. The persons who were to derive the benefit from this grant, were the inhabitants of the places enumerated; and those *resident*, as well as those who had lands and tenements, within the district, were, as we have had occasion frequently to point out, all to transfer the suit which they before owed at the court of the abbot and of the hundred, to the court of the mayor and commonalty; so that, from this charter, the doctrine we have before asserted, both with respect to *boroughs and corporations*, is established.

The essential character of the former is the *separation of the borough from the county*—and the establishment of an *exclusive jurisdiction*—with courts belonging to the district:—and the sole effect of the latter is, to recognize in the aggregate body of the inhabitants that capacity which in point of fact they possessed before, but which we have observed, in the last preceding reigns, had begun to be disputed in law—namely—the power of perpetual succession—the having a common name—the power of pleading and being impleaded by that name;—and the capacity of purchasing and possessing property. Boroughs.

It should be observed, that neither this charter nor that of Hull, define who the burgesses were. Both these places had burgesses before—as we have seen from former charters. And they could be none other, but the *free inhabitant householders* of the place—as we have irresistibly proved; from the earliest laws—the ancient text writers—the statutes.—From records public and local:—and from the solemn decisions of judges, as reported in the Year Books. Inhabitant householders.

Hen. VI.

So, in the same manner, the persons who would be burgesses from the added *decenna* and *hamlet*, could only be the *free inhabitants* described by the word "habitatores:" and for the reasons previously adduced, they would owe their suit at the borough *leet*, and would be *sworn* and *enrolled* there; would be liable, as householders, to pay *scot and lot*; and in that manner—not by the provision of the charter of incorporation—but by the operation of the common law—become burgesses of Plymouth.

Making
Burgesses.

This also explains a clause which occurs in the petition, as to making burgesses. We have seen some reference to this power in the charter of Dublin by King John; where it appeared that the burgesses had authority given to them to grant certain lands to be built upon, and by that means to create burgesses. This clause of the petition, though in modern times so much misunderstood, has in truth the same effect as that in the charter of Dublin. For inasmuch as persons might come to *reside* as *householders*, either in Sutton, or the *decenna* or *hamlet*; so the burgesses would have a right, in their court *leet* and *frankpledge*, to exercise a sound discretion, whether they were fit persons to be received, upon the usual *finés* or contribution, within their liberty. If so, they would receive them; and the consequence would be, they would be made burgesses: and the swearing and enrolling them as such, would, under the common law, have the effect, to which we have before referred, of making them *free*, although they might have been the *men* or *villains* of the king or of other lords. And as new districts were included within the borough, it became essentially necessary that the king should by this charter recognize this power in the burgesses; they therefore prayed this privilege, and the king granted it, amongst the other consequences of the united places becoming a borough.

But it would be absurd to consider that this clause gave to the burgesses the power which is insisted upon in modern times, of admitting indiscriminately whom they thought fit—including *non-residents* as well as *residents*;—and (considering the time in which it was granted) including *inmates* as

well as *householders*; and *villains* or *bondmen* as well as those who were *free*; this would be to have given them a power totally inconsistent with the general law as it then stood. For instance,—how could a person not *living in the place*, or not being a *householder*, be liable to *scot and lot*? which all the documents show was a precedent qualification. How could such a person be, in the early language, “*of the place*?” Or how could an *inmate* be subject to the same obligation? How could they admit a *villain* who had not been resident a year and a day in the place?

Hen. VI.

This power therefore must be taken with reference to the law as it then stood; and be considered as only enabling the burgesses to receive as inhabitants of the town, and swear and enrol as burgesses, persons, who not being villains or fugitives, but of *free condition*; against whom there was no charge, and who were desirous of coming to live as householders within the borough, in consequence of which they would be liable to *scot and lot*. All these immunities, qualifications, and circumstances were, under the law as it then stood, necessary to place the party in such a position, that either he could be a burgess, if he desired it;—or the burgesses could compel him to be so, if he declined it; according to the instances we have shown in the boroughs of Lynn and Yarmouth.

The next charter of incorporation which we meet with is *Ipswich*,* by which the king, after reciting that his beloved burgesses of his town of *Gippewich* were very much burdened with the payment of the annual farm, which they and their successors were obliged to pay him for the town, and that they were grievously impoverished, did, for the relief of the town, grant to the burgesses and their successors, the liberties, franchises, acquittances, and immunities under-written—viz., that the town should be for ever a free borough *corporate*, in deed, and in name of the burgesses of the town; and that they, for the time being, should be for ever a perpetual community corporate, in deed and in name; and

Ipswich.
1446.

Corporate.

* Rot. Cart. ab a° 21 usque 24 Hen. VI. n. 15.

- Hen. VI. might have perpetual succession, and a common seal, to dispatch the business of the town. And that in every year, at the accustomed time and place, they might choose out of
- Bailiffs.** themselves, two burgesses of the town, to be *bailiffs* thereof, who should exercise that office for one entire year, for the safe and wholesome government of the town. That the bailiffs and their successors, and four such other burgesses of the same town, as the said bailiffs should be pleased to take
- Twelve portmen.** to them, out of the 12 *portmen* of that town and their successors, should elect and nominate, for this purpose, five, four, three, or two of them, who might be from henceforth for ever
- Justices.** keepers of the peace, and justices to keep the peace within the town, &c.; and also to hear and determine all felonies, trespasses, and offences within the town and the liberty, &c., and all other matters and things whatsoever, &c. That the burgesses, their heirs and successors, burgesses of the town,
- Fines.** might for ever have all manner of fines, issues, forfeitures, and amercements, belonging to the judiciary of the peace within the town and liberty, suburbs, &c., and from the judiciary forthcoming in any manner, to be recovered and levied by their own proper officers, as fully and wholly as the king or his progenitors, in any manner, had and received such fines, issues, forfeitures, and amercements, before the justices of the peace, in the county of Suffolk, within the town, and the liberty, suburbs, &c., of the same, theretofore happening and arising, in aid of the payment of the farm, and in support of the great burdens daily incumbering the town. That the bailiffs and burgesses of the town of Gipeswich, and their heirs and successors for ever, might have the forfeiture of
- Assise of bread and beer.** victuals, by the law of England, viz., the assise and correction of bread, wine, and ale, and other things which do not belong to merchandise; that the burgesses and their successors might have either of those two burgesses who should
- Escheator.** be chosen bailiffs of the town, to be the *escheator*, who should have the same power, jurisdiction, &c., in the town, liberty, &c., as other escheators have or should have elsewhere, within the kingdom of England. That no other escheator should introduce himself into the town, liberty, &c., to
- Non-intromit.**

execute any thing relating to the office of escheator, within Hen. VI. the town, &c. That every burgess elected bailiff of the town, after such election of him made to the office of escheator, should take his oath, faithfully to execute the office of Oath. escheator within the town, before the burgesses of the town: so that such escheator should by no means be obliged or compelled to take his oath elsewhere, or before any other than the burgesses of the town, and that within the town only.

And the king further granted, that the burgesses and their successors might be persons able and capable in law, to purchase lands, tenements, &c., within the town and liberty, &c., to have and to hold the same to them and their successors, the statute of not putting lands and tenements in mortmain, Mortmain. notwithstanding. That the admiral of England, or his lieutenant, or deputy, or the steward, mareschall, or clerk of the Admiral. market, the household, or any of them, or the deputy of any Clerk of the market. one or more of them, should not enter or sit within the town, nor the liberty, suburbs, &c., thereof, to inquire concerning any matters or things relating to their offices, nor concerning any things done, or hereafter to be done, within the town, or the liberty, &c., nor should any inquiry be made concerning them, nor should any one or more of them intrude him, or themselves, nor prosecute any burgesses of the town, nor any persons *residing* within the town, liberty, suburbs, &c., on any pretence, without the town, for any things happening or arising within the town, liberty, &c., for the future in any manner. That the burgesses, their heirs and successors for ever, might have all issues, forfeitures, fines, and amercements Fines, &c. whatsoever, before the escheator so chosen as aforesaid happening or arising; and also all goods and chattels of persons outlawed, within the town, &c., now *resident* and *commorant*, or hereafter to be *resident* and *commorant*, within the town, liberty, &c.; to be received and levied by their own proper officers, in aid of the payment of the farm, and in support of the great burdens daily falling on the town, or in the same happening or arising, as fully and wholly as had been accustomed.

Hen. VI. This charter is added at some length, because it was not printed with the Ipswich charters; and it is said, that few knew any thing of it, till it was some time since found thrown into a hole in the treasury. An historian of Ipswich says, "We will only add an observation or two upon the style of this corporation. In ancient times, the gentlemen of the law were not so curious in this matter, as they have been of later years. It appears from Mr. Bacon's MS., that in the reign of King Richard II., A. D. 1393, on an exchange of a piece of ground with the prior and convent of the Holy Trinity, the bailiffs, coroners, chamberlains, and burgesses, were the contracting parties on the behalf of the corporation. This charter, now recited in A. D. 1446, incorporates the town by style of 'the burgesses of Ipswich,' and declares them to be a perpetual community, *corporate* by that name. The charter of King Edward IV., A. D. 1464, altered the style, and made it 'the bailiffs, burgesses, and community of the town of Ipswich;' or as it is now commonly called in English, the bailiffs, burgesses, and commonalty of the town of Ipswich. The charter of the 17th King Charles II., A. D. 1665, made no alteration in the style; but that of the 36th of Charles II., A. D. 1685, made an addition to it, and called them, 'the bailiffs, burgesses, and community [or commonalty] of the town or borough of Ipswich, in the county of Suffolk.' However, as the corporation hath not acted under this last charter, since the revolution in 1688, the proper style of the corporation now is, 'the bailiffs, burgesses, and commonalty of the town of Ipswich,' without any further addition."

Tenby. The next municipal charter upon the roll is that of *Tenby*; however, it is not a grant of incorporation, but merely a confirmation of previous liberties.*

Southampton. After *Tenby*, the next succeeding charter to a borough is that of *Southampton*, incorporating that place. In the early part of the same reign, there is a document which seems clearly to import it had not been incorporated up to that period; for in a plea it is alleged, "that South-

* Rot. Cart. n. 18.

ampton was an ancient borough;”* but nothing is said Hen. VI.
of its having been incorporated. And from the same
document it will be seen, that although it was not incor-
porated, it had the usual powers of the election of its own
municipal officers, and the usual grant of liberties from the
king, with a distinct reference to the privileges obtained under
the common law by *residence for a year and a day* within Residence.
the town, and the consequent necessity of paying *scot and* Scot and
lot under the same system of municipal government. It Lot.
seems also incontrovertible from this record, that *living for a*
year and a day in a place, and paying scot and lot, was held
to be such decisive evidence of a person being a burgess of the
town, that the mayor, upon the allegation, claimed to have
the felon’s goods, as a burgess of the town. The document
is as follows :—

Peter James,† late mayor of the town of Southampton, was
impleaded in the Court of Exchequer for 20*l.*, the price of
divers goods of a felon convict. He comes and pleads, that
the town of Southampton is, and time out of mind was, an
ancient *burgh*; that the *burgesses* there used to choose
yearly de seipsis, a mayor and bailiffs; that King John
granted the town to the *burgesses* in perpetual farm, to hold
to the said burgesses, their *heirs and successors*, rendering
yearly 200*l.* sterling; that King Henry VI., by his letters
patent, confirmed the grant of King John, and also con-
ceded to them, that they, their heirs and successors, should
have for ever the goods of felons and fugitives, which goods
they or their ministers might seize and retain. And lastly,
that these grants were confirmed by King Henry V. and
King Henry VI. And the defendant further saith, that the
felon was a *tenant and resident* (that is, an inhabitant house-
holder) in the said town at the time the felony committed,
and long before, to wit, *a year and a day*, and was assessed Year and
to *scot and lot*, with the *men* of the town. And thus, he a day.
being then mayor of the town, did, as minister of the *towns-* Scot & lot.
men, seize the goods to the use of the *townsmen*, according
to their grants and liberties. The Court adjudgeth, that the

* Rot. Cart. n. 22.

† Magd. Fir. Bur. 206.

Hen. VI. said Peter James should be charged to the king with the said 20*l*.

Southampton being thus circumstanced, and the real nature of its burgesses being thus defined upon the principles of the common law, the king, in the 22nd year of his reign, granted a charter, reciting, that, as Southampton was upon the coast of the sea, he had granted to the burgesses, their heirs and successors, for ever, the liberties and franchises following:—that the town should be for ever *incorporated* of one mayor, two bailiffs, and the burgesses; and that they and their successors should be a perpetual community, *incorporated* in deed, fact, and name, by the name of “the mayor, bailiffs, “and burgesses of the town;” and that they might have perpetual succession; and be capable in law to maintain all actions, real and personal, &c.; plead and be impleaded; and that they might be capable to purchase and hold lands within the borough, notwithstanding the statute of mortmain.

It should be observed, that, with respect to this charter of Southampton, as well as that to Plymouth, the expression descriptive of the corporation, is in these, as well as in that of Hull, not simply the “commonalty,” but “a perpetual commonalty incorporated;” and likewise, as a convincing proof that all the privileges granted were intended to be *local*, the power of holding lands is confined to possessions within the borough.

After this charter, there are grants to the abbey of Evesham;* another to the town of Tenby,† granting, that the burgesses should be released from toll, murage, &c. going to the port of Bristol.

Another to Shrewsbury‡—to Northampton§—and London,|| which latter we have already quoted; and none of these are charters of incorporation.

There is also one to *Newcastle-upon-Tyne*,¶ which confirmed all previous charters; and another, subsequently, in

* Rot. Cart. n. 27.

† Rot. Cart. n. 29.

‡ Rot. Cart. n. 31.

§ Rot. Cart. n. 32.

|| Rot. Cart. n. 34.

¶ Rot. Cart. n. 39.

Newcastle-upon-Tyne.
1441.

the same reign, which we have stated before; but neither of Hen. VI.
 them are grants of incorporation.

The next is a charter to Coventry,* reciting those of Coventry.
1445.
 Edward II. and Edward III., giving to them the same privileges as the mayor and citizens of Lincoln enjoyed; and to remove the obscurities of former charters, it was granted to the mayor, bailiffs, and *commonalty*, their heirs and successors, that all inquisitions should be taken by men *dwelling and belonging, conversant and resiant* within the town, and not by *foreigners*; and giving them power to correct any customs used in the town which were in anywise useless or defective, for the common benefit of the town; with a confirmation of their fairs.

The same king, afterwards, in the 30th year of his reign,† 1451.
 by reason, as he states, of the special affection which he bore to the city of *Coventry*, and the mayor and bailiffs thereof; and for the quiet of the town; granted to the mayor, bailiff, and *commonalty*, their heirs and successors, that the city, with *several hamlets which were then within the county of Warwick*, should be one entire county of itself, *corporated* in deed and in name, and *wholly separated* Corpo-
rated.
from the county of Warwick, for ever; and that they should not be parcel of the county of Warwick, but should for ever distinctly and separately be called the county of the city of Coventry. But that the mayor and bailiffs should be elected at the same time, place, and in manner and form, as they had been accustomed to be elected in the time of King Edward III., or in the time of any other of the progenitors of the king; also that the bailiffs should be thenceforth elected in manner and form aforesaid, and should exercise and execute the office of bailiffs there, according to the effect of the accustomed franchises and liberties used in the city; that the sheriffs should hold a county court within the city from month to month, and have and exercise all such jurisdiction and liberties in all other things pertaining to the office or town and hamlets which any other sheriffs within the kingdom of England have in their bailiwicks;

* Rot. Cart. n. 42.

† Rot. Cart. n. 29.

Hen. VI. and that all writs, &c., from whatsoever cause or matter, arising within the city, hamlets, &c.—which would have been directed to the sheriff of the county of Warwick, and by him to be served and executed, if the city, hamlets, &c., had not been made an entire county of itself—should be made and directed to the sheriffs of the city of Coventry.

No other
sheriff to
intromit.

And that *none other sheriff of the kingdom*, except the sheriffs of the city aforesaid, and their bailiffs, &c. *should in anywise enter the same city or hamlets*, to exercise any thing which should pertain to the office of sheriff there, or in any manner intermeddle therein. And that no sheriff of the city should in anywise be compelled or bound personally to come out of the county to account for any thing belonging to their offices.

Coroner. Also that the *coroner* of the city of Coventry should be coroner of the county of the city; and should have all his former power and jurisdiction within the county of the city; and that the said coroner of the city should be for ever clerk for recognizances of debts.

Clerk of
the mar-
ket.

That the mayor should be clerk of the market, and of the household: together with all things to the same office of clerk of the market in anywise pertaining; with all fines and redemptions therefrom coming, to be levied and taken to the use and profit of the mayor, bailiffs, and commonalty, and their successors, for ever.

Quit of
tolls.

That the mayor, bailiffs, commonalty, burgesses, merchants, and the *inhabitants* within the city or town of Coventry, and their successors, should for ever be quit of toll, &c. throughout the whole land of Ireland. And that they should hold and use all other franchises, liberties, immunities, quittances, and customs, which the mayor, bailiffs, and commonalty, or their ancestors or predecessors, by whatsoever names, have had and used; or according to the custom there; or by tenor of any former gift and grant to the “mayor, bailiffs, and commonalty,” or to the “burgesses of Coventry,” or to the “merchants of the town of Coventry,” or to the “burgesses, honest men of the town of Coventry,” or to the “men of Coventry, tenants of the

manor of Cheilesmore," to the "bailiffs, and men, and Hen. VI. tenants of the manor of Cheilesmore," or to the "mayor, bailiffs, and men of the town of Coventry," or to the "mayor, bailiffs, and commonalty of the town of Coventry," or to the "burgesses of the town of Coventry," or to the "mayor, bailiffs, citizens, and honest men of the city of Coventry," by the king or his progenitors heretofore made.

It should be observed, that in this instance also, the term incorporated is used in its primitive sense; for it is here applied to the actual local incorporation of the city, with several adjoining hamlets.

The next municipal charters are to *Bath*,* *Derby*,† and *Colchester*,‡ which are *not incorporated*.

Bath, &c.
1446.
to
1447.
North-
ampton.

Shortly after which, follows a charter to *Northampton*,§ *incorporating* that place—whereby the king, after reciting—that various privileges had been granted by his progenitors to the burgesses of Northampton, and from the services they had rendered to him, and from the love and affection he bore to them—granted that the mayor, bailiffs, burgesses, and their successors, should be one perpetual community and body *corporate*, in name and deed; to have perpetual Corporate. succession; and by the name of mayor, bailiffs, and burgesses should plead and be impleaded. Then follow privileges, in substance the same as those of Kingston and Ipswich.

There is also another charter to *Derby*,|| but it is *not one of incorporation*.

Derby,
&c.

After which follows a charter to *Woodstock*,¶ in which the king, reciting that the tenants, *inhabitants* and *residents* of Woodstock, had petitioned him to be *incorporated*, and to be persons capable to have perpetual succession,—granted, that New Woodstock should thenceforth be a free borough; and the tenants, *residents* and *inhabitants*, their heirs and successors, should be free burgesses. That they might have a mercatorial guild, and the same liberties and free customs which the burgesses of New Woodstock had—

Wood-
stock.

* Rot. Cart. 25 to 26 Hen. VI. n. 10.

§ Rot. Cart. 27 to 29 Hen. VI. n. 5.

† Rot. Cart. 25 to 26 Hen. VI. n. 33.

|| Rot. Cart. 25 to 26 Hen. VI. n. 8.

‡ Rot. Cart. 25 to 26 Hen. VI. n. 24.

¶ Rot. Cart. 25 to 26 Hen. VI. n. 22.

Hen. VI. That from thenceforth, in name and deed, they should be one
 Corporate. body, and one perpetual community *corporate*: That they might yearly elect from themselves a mayor:—That the mayor and commonalty might have perpetual succession; and by the name of “the mayor and commonalty of the borough of New Woodstock,” plead and be impleaded—answer and be answered—in all suits, &c.: That the mayor, commonalty, and their successors, should be released from tolls, &c. Powers are then given to the mayor and commonalty, to hear and determine suits. A grant of fairs, and other liberties, also follows.*

Canterbury
1448. There is likewise a charter of this date, to the *city of Canterbury*, contained in an inspeximus charter of the 1st of Edward IV., which describes it as a charter of Henry, late, “in fact,” but not “in right,” king of England; and recites that it was one of the most ancient cities of the kingdom, and from time whereof the memory of man then was not, had been, and then was *incorporated* of two bailiffs, and one perpetual commonalty of the city aforesaid. The king grants to the then citizens of the city, and the commonalty of the same, that their *heirs* and successors, *born* in England, and *inhabiting* in the same city, in the place of the bailiffs of the city, might elect some person from themselves, of the more fit, discreet, sufficient, and honourable, to be mayor, for the good and wholesome governance of the city, and so from year to year; and that the city should be *incorporated* of one mayor and one perpetual commonalty of the said city for ever; and that the mayor and commonalty of the city aforesaid, for the time being, and their successors, should have and hold the city and suburbs, with all the liberties, franchises, privileges, &c., and all other things, to the same city and suburbs pertaining, as fully and entirely as the then bailiffs and citizens of the said city, or they or any their predecessors, theretofore more beneficially and fully had and held, or they or any of them theretofore used and enjoyed. That every mayor should make serjeants-at-mace for executing proclamations, and other executions, within the city and suburbs.

* Rot. Cart. 27 to 39 Hen. VI. n. 22.

That they should have the *return* of all *writs* and warrants arising, or to arise, within the city, suburbs, and liberty, by their bailiffs; so that no sheriff, bailiff, or other minister whomsoever, should in anywise enter the city, &c.:—That the citizens, mayor, and commonalty, and their successors, by the name of the “mayor, commonalty, and citizens,” should be persons capable in law to purchase lands, &c., and should have perpetual succession, and might implead and be impleaded: That the mayor should have cognizance of all manner of pleas personal, and other things whatsoever arising, or to arise, within the city, suburbs, and liberty, in the same manner and form as the bailiffs had; and should make executions of the same, by the serjeants; and also cognizance of all pleas of lands or tenements within the city, suburbs, liberty, and precinct thereof; and also of assises of novel disseisin, mort d’ancestor, and of certificates arrayed, and to be arrayed, and of attainments, debts, trespasses, and all other complaints and pleas, real and personal, arising or to arise; so that no justice, sheriff, bailiff, coroner, or any other minister, should in any wise intromit themselves or himself, concerning any juries or pannels within the city, but only the mayor: That the mayor and his successors should be justices and keepers of the peace within the city, and should hear and determine all felonies, trespasses, &c., and other things arising within the city; that no other justices, or keepers of the peace, should thenceforth intromit themselves to inquire by citizens, burgesses, or residents, within the city, suburbs, and liberties aforesaid, or the precinct of the same, concerning any felons, &c.; neither should they, nor any of them, inquire by any *foreigners*, within the city, suburbs, and liberty, or the precinct of the same, nor elsewhere in the county aforesaid, of any felonies, &c., arising within the city, &c., but only before the mayor.

Hen. VI.

Return of
writs.Non intro-
mit.

Justices.

And if it should peradventure happen, that any one or more of the citizens or *residents*, within the city, suburbs, &c., should be indicted or presented for any matter within the same, before the keepers of the peace, and the justices in the

Hen. VI. county aforesaid, such indictments, or presentments, should be of no force, and void.

Attach- That the mayor should have power of attaching by the ments. body, all persons of insufficient means, in all pleas, &c.

Cognizance And when any original writ between any parties, concerning any lands, tenements, rents, and other tenures, being within the same city and suburbs, for a fine to be thereof levied, should be thereafter sued out of the chancery, the mayor should have cognizance thereof; so that a reasonable sum of money by the parties, according to the custom, for licence to agree, might be levied to the king's use.

That the mayor and commonalty should not be compelled to come out of the city, suburb or liberty before the justices of assise, keepers of the peace, justices of labourers, artificers, and such others, and other the justices or commissioners of the king, sheriffs, escheators, or coroners, justices to hear and determine, and other officers and ministers whomsoever of the king; nor that they, or any of them, should be impannelled, constrained or compelled; or that any *stranger of the body of the county* of Kent should be impannelled with citizens of the said city in assises, or other juries whatsoever.

Bye-laws. That the mayor, together with all the aldermen for the time being, or only the mayor, might frame and make reasonable ordinances and constitutions for the public good of the city, and the sound and wholesome government of the same; and also to change the same, as it should seem most expedient to them, for ever. And that the mayor and aldermen, for the necessities and profits of the city and suburbs, with their common assent, might assess talliage upon the goods of all the *men of the city* and suburbs, of every one according to his estate, as well upon their rents, mysteries, merchandises, and otherwise, as might seem best to be made, and to levy the same without impediment of the king, his heirs and successors, justices, or other ministers whomsoever. And if it should happen that the mayor should give orders for any citizens or *resiants* of the city, for the public good

and advantage of the city, or for their counsel had in the premises, or for other things, or reasonable causes, to come to him, and the same citizens and residents, or any of them, should refuse to appear, or to obey the same, without reasonable cause, then the mayor for the time being might arrest, imprison, and amerce them, and every of them by occasion thereof, from time to time, according to the exigence of the case; which amercements of the mayor and commonalty of the city should thenceforth be to the use, behoof, and profit of the city for ever. And that the mayor and commonalty should thenceforth for ever have one coroner within the city and the precinct thereof: and that the coroners of the county of Kent should not in any manner intromit themselves within the city, suburbs, and liberty, &c.

Hen. VI.

Coroner.

The reader will instantly perceive, upon a comparison of the words of this charter with those to Canterbury which preceded it, that it commences with a direct misstatement of what had been the previous state of Canterbury, when it affirms that it had been, from time immemorial, *incorporated*. This is obviously untrue, for no charter of incorporation had ever before been granted; nor is there any trace of its having been so considered. This recital is, therefore, *false*; and as it is the first of the kind we have met with, it may be considered as the prototype of those recitals which became so common in the reign of Queen Elizabeth, and which were equally contrary to the truth. It should also be observed, that the doctrine of incorporation was at this time so little understood, that although Canterbury is stated to have been immemorially incorporated, yet the grant is to the mayor and commonalty, and their heirs.

The same king, in the 31st year of his reign, granted another charter to Canterbury, which appears by inspeximus, in a charter of Edward IV., and which commences by reciting, that the mayor and commonalty had had divers franchises granted to them, until by force of an act of Parliament they had been seized; and further reciting, that certain obscurities and ambiguities had arisen, whether the mayor and burgesses

Hen. VI. could enjoy those liberties by reason of the same act of resumption; and the king declared to the mayor and commonalty, that the act should not extend to take away any thing confirmed by the king; and that the citizens for the time being, and then *inhabiting*, might make election of a mayor, in the same manner as the citizens of London; provided they elected one of their fellow citizens. Directions are then given as to the election of the bailiff, the cognizance of pleas; and that no sheriff, coroner or bailiff should intromit; and that they should have cognizance of pleas arising also within the precinct of the hamlet of Stable Gate, in the same city, parcel of the vill of Westgate, without the same city. The charter also appoints justices of the peace—puts restraints upon the use of liveries—gives to the citizens the custody of the gaols—and authorizes the justices to deliver the same.

South-
ampton,
&c.

The next charter on the roll to that of Canterbury, is one to *Poole*.^{*} Then follow charters to *Southampton*†—*Coventry*‡—*Norwich*§—*Winchester*||—*Stratford*¶—and *York*,^{**} none of them being charters of *incorporation*. That to York recites, that it was a county of itself, separate from the county of York; and the charter grants, towards the enclosing of the town, certain customs, specifying the tolls that were to be taken, and provides, that the hundred of Ansty should be annexed to the city, and be parcel of the same, and included within the walls, *except the castle of York*. And that the bailiffs of the franchise should be obedient to the precept of the sheriff of the county of the city of York, and not to any other sheriff; and that the citizens should have the hundred, as they have within the county of York, with the goods of felons, fugitives, &c.

This charter affords another instance of a hundred being taken away from a county, and annexed to the exclusive jurisdiction of a city.

^{*} Rot. Cart. ab anno 27, usque 39 Hen. VI. n. 25.

† Ibid. n. 27.

‡ Ibid. n. 29.

§ Ibid. n. 31.

|| Ibid. n. 36.

¶ Ibid. n. 51.

** Ibid. n. 54.

There was also, in the twenty-seventh year of this reign, a charter of *incorporation* to the town of *Nottingham*. The burgesses of that place had obtained, in the commencement of the reign, a grant of confirmation of their liberties to them, their *heirs* and successors, burgesses of the town, with cognizance of pleas, and the chattels of felons and fugitives, and of the tenants and *resiants*, with the *return of writs*—that no sheriff, bailiff or other minister of the crown, should intromit—that they should have all forfeitures—and that the mayor and recorder, and four *other good and lawful men of the town* should be justices of the peace—that they should have all fines and amercements, as the mayor, bailiffs, and burgesses of the town of Coventry had. That the mayor should be joined in the array of arms, with a confirmation of all their former rights. But there is *no* mention in any part of this charter of any *corporate* privileges.

Hen. VI.

Notting-
ham.
1449.

However the charter of incorporation of this year, like that to Canterbury, falsely recites, in the commencement, that it had been for a long time a town *corporate*; though it modestly qualifies that expression by adding, that it had been so “under a certain form.” It then proceeds to grant to the burgesses of Nottingham, that they, their *heirs* and successors, burgesses of the town, for ever should be *incorporated* of a mayor and burgesses; and that the mayor and burgesses, and their successors, mayors and burgesses of the same town so *incorporated*, should be a perpetual community, *corporate* in deed and name, by the name of “The mayor and burgesses of the town of Nottingham.” That they should have perpetual succession—be capable in law to prosecute and defend all manner of pleas, &c., and to plead and be impleaded. That the mayor and burgesses, and their successors, by the same name, might be able to acquire and hold to them and their successors, for ever, all lands, tenements, possessions, and hereditaments whatsoever.

1449.

Incorpo-
rated.

That the town of Nottingham and the precincts, &c. which then were within the body of the county of Nottingham, should be from the 15th day of the month of September next coming, separated, distinct, divided, and in all things wholly *exempt*

- Hen. VI. *from the same county*, for ever, as well by land as by water, (the castle of Nottingham, and the messuage called the King's Hall, in which is the gaol of the counties of Nottingham and Derby, only excepted.) That the town of Nottingham, and the precincts as they extend themselves, be from the same day a county of itself, and not parcel of the county of Nottingham; and that the town of Nottingham, and the precincts of the same, as they extend themselves or are used (except as before excepted) be for ever named, holden, and esteemed the county of the town of Nottingham by itself. That the burgesses of the town, and their successors, might for ever have, in the place of two bailiffs of the town, two sheriffs in the town and precincts, to be chosen from themselves by the mayor and burgesses out of the burgesses, in the same manner as the burgesses of the town have been accustomed to be elected to be bailiffs, to execute the office of sheriff of the county; and that they should not go out of the town to take their oaths. That the mayor should be the escheator. And that no other escheator or sheriff in or of the same town of Nottingham should in any wise howsoever be made, except from the burgesses of the same town as aforesaid; and that the escheator and sheriffs of the town, and their successors, might have the same power, jurisdiction, and authority, as other escheators and sheriffs. And that all writs, &c. which by the bailiffs of the town heretofore, in anywise howsoever had been accustomed or ought to be served from the 15th day of September, should for ever be directed, sent, and delivered to the sheriffs of the town. And that the sheriffs of the same, from month to month, continually hereafter, might hold county courts of the county of the town of Nottingham within the same. That they might hold a court for the determination of all pleas, real and personal, with all the profits of the same. That they should have all chattels of felons, &c. &c., with all amerciaments, &c. and fines for licence of agreement of the men, or any tenants or *inhabitants* of the same town. And also, all issues, fines, and amerciaments of whatsoever pledges and manucaptors of any persons *inhabiting* within the town, or there being

Exempt
from the
county.

Sheriffs.

Escheator.

Writs.

County
Courts.

Fines, &c.

Hen. VI.

entirely or not entirely a tenant, although the persons or the pledges or manucaptors should hold of the king; and also of all and singular the burgesses of the town, as well resident as non-resident, although they should not be entire tenants there or elsewhere. That the burgesses, their heirs and successors, might from time to time elect out of themselves seven aldermen, of which one should always be elected mayor Aldermen. of the same town; which aldermen, so elected, during their lives, should remain and be, unless they or any of them, by their special request to the residue of the burgesses of the same town for the time being, or by reason of any notable cause, from their aldermanships, by the mayor and burgesses of that town for the time being, should be removed; and that any such alderman dying, or in any manner howsoever *departing** or being removed from his office of alderman, the mayor and burgesses of the same town for the time being, and their *heirs* and successors for ever, should have full power and authority by the tenor of these presents, to elect one other burgess out of themselves into the aldermanship of the same town, in the place of the alderman so dying, departing, or being removed:—that the same seven aldermen, or six, five, four or three of them, of whom the mayor of the same town for the time being was to be one, should have full power to inquire of, hear and determine, all felonies, murders, trespasses and misprisions, &c. and other things, which to justices of the peace belong. That the burgesses might for ever have all manner of fines, issues, forfeitures and amerciaments before any of the aldermen and mayor, and the keepers of the peace, or by reason of the justiciary of the peace, there made or to be made, forfeited, &c. in aid and support of the great charges of the town, daily incumbent; and forfeiture of all victuals within the town and precincts, by the law of England in anywise forfeited, that is to say, of bread, wine and ale, and other victuals whatsoever which to merchandise do not appertain. And that the steward and marshal of the household, and the clerk of the market of the house-

* Departing from the office must mean, that departing from the town should vacate the office.

Hen. VI. hold of the king, should not enter within the town or liberty, &c. &c. &c.

Non-intromit.

We find upon the Patent Rolls of this period; that the town of *Tenterden* received a charter of *incorporation* of the *inhabitants*, by the name of “the bayliffe and *commonaltie* of the town and hundred of Tenterden;” and the town was annexed as a member to the town and port of Rye.*

Tenterden
1447.

In consequence of our having already made so many extracts from charters of more important towns, we shall refrain from trespassing upon the reader’s patience, further than by noticing this grant thus briefly, as its provisions bear the strictest analogy to those we have already quoted.

PARLIAMENT ROLLS.

We proceed now to the Parliament Rolls of this reign; the more important enactments are contained in the statutes, from which we have previously made considerable extracts. Some few other entries may however be worthy of observation; particularly as confirmatory of the doctrine we have before urged, that there were *many commonalties recognized by the law which were not incorporated*. We therefore insert the following petition respecting Tewkesbury.

Commonalties.

Tewkesbury.
1429.

Petition to the king, and lords spiritual and temporal, in Parliament assembled, by the bailiffs, burgesses and *commonalty* of the town of *Tewkesbury*,† complaining of the seizure of their corn and goods on the river Severn by the *commons* of the Forest of *Dean*, notwithstanding the king’s proclamation to the contrary. And they pray for relief; and that penalties might be imposed to protect them. Also that the *commonalties* of the *forest* and *hundreds* might be charged for the same, as actions are by the statute of Westminster given against the hundred. And that the parties wronged might have their action of debt against the said *commonalties* of the forest and hundreds, notwithstanding they were not *corporate*, and that the goods and chattels of any person of

* Rot. Pat. 27 Hen. VI. p. 3, m. 9. † Pet. Parl. 8 Hen. VI. m. 9, p. 345.

the commonalties for the time being, *be taken** in law as Hen. VI.
the *goods of the same commonalties*; and that such parties
might have an action of debt, &c. against the trespassers,
to recover the costs and damages of such actions.

To which the answer was, that it should be as it was
desired.

That the system of tythings and decennæ, borrowed from Cornwall.
the Saxon laws, was in full force in the county of Cornwall;
and that its administration was corrected by reference to
the common law, is proved by the following extract from the
Parliament Rolls.

The commons of the shire of Cornwall pray,† that as it is 1432.
contained in the statute of the Great Charter, confirmed by
divers other statutes, that no man should be amerced but
after the quantity of his trespass; and that no amercements
should be set nor put upon any person but by the oaths of
worthy and lawful persons,—as in the said statute more
plainly appeareth,—and within the said shire, because the
decennæ, otherwise called the *tythings*, coming not whole
and full into the *sheriff's tourn*, they were amerced, and the
amercement affeered before the sheriff, and among other
issues and profits of the said shire, in estreats written and
delivered unto the bailiffs of every hundred within the shire,
to make levy thereof, and to account therefore in discharge
of the sheriff for the time being, before the auditors of the
Duchy of Cornwall at the Exchequer, then at Lostwytheyell,
for the time being, there to be charged upon their account,
after the same estreates written and delivered unto them, and
notwithstanding any statute thereof made, now late the
auditors of the said duchy, have put, and are for putting,
such manner of defaults upon the said decennæ or tythyngs,
great fines and sums at their own will, and charging the said
bailiffs therewith upon their accounts, and committing them
to prison till levy be made, with outrageous and grievous dis-
tresses, in great vexation and trouble of all the poor commons

* See case of Ipswich, Seventh Year Book, 8 Hen. VI.

† Pet. Parl. 10 Hen. VI. m. 6, p. 403.

Hen. VI. of the said shire, and undoing of the said bailiffs. Whereupon they pray, that the said statute, and all others thereof made, should stand in their strength; and that it be declared and ordained, by authority of this present Parliament, that all such defaults for not coming unto the *sheriff's tourn*, of any *commonalty*, or of decennæ or tythyngs, or any like thereto within the said shire, be in case (en cas) of the said statute; and that it be punished by a common amercement, to be affected by two or four *worthy and lawful persons* of the same hundred of the which the decenne, tythyng, or commonalty is, before the sheriff; and the amercements so affected to be levied, and no other amercements, fines or sums for that cause. And if any other amercement, fine, or sum, be put upon any decenne, tythyng, or commonalty, that it be for nought and void, and not leviabie; and if any person be grieved by imprisonment or by distress, or in anywise against the form of this ordinance, that the party grieved have his action, &c.

Answer.—Let the common law be preserved and kept.

The following document is also taken from the same records:—

Lincoln. The mayor, and all the commonalty of the city of *Lincoln*, pray the king to grant them licence, by his letters patent, that they may be able to purchase lands, tenements and rents, to have and hold them for themselves and *successors* for ever.*

And licence is granted to the mayor and commonalty of the city of *Lincoln*, to hold lands to the extent of 120*l.* per annum, to them and their *successors*.

This document affords a strong confirmation of our former assertion, that *Lincoln* was *not incorporated*; for had it been this licence would have been unnecessary. It therefore establishes, that the term used in the statute of Henry V. was applied, as we have stated, in its primitive sense of actual local incorporation, and not as descriptive of a body corporate or politic.

Guilds. On the contrary, we may learn from the same documents, that guilds and fraternities were at this time treated as

* Pet. Parl. 10 Hen. VI. n. 9, p. 417.

Hen. VI.

incorporated ; for the following entry appears upon the Parliament Rolls ; from which it will be seen to what extent the abuses exercised by them had, even at this time, arrived, and called for the correction, which was afforded by Parliament, with a view to the common profit of the people.

1437.

The masters, wardens, and men of many guilds, fraternities, and other companies *incorporate*, dwelling in divers parts of the kingdom, under the colour of general words, granted to them, and confirmed by charters and letters patent,* make many disloyal and unreasonable ordinances, by which many are deprived of their franchises and profits, for their private profit and common damage of the people. The king commands, that the master, wardens, and men of each such guild, fraternity, or company *incorporate*, may carry and make a registry of record before the justices of the peace in the counties, or before the chief governors of cities, boroughs and towns, where such guilds, fraternities, and companies are, of all their letters patent and charters ; and that no such masters, wardens, or men, shall make any ordinance which shall be in disherison or diminution of the franchises of the king, or of others, or against the common profit of the people ; nor to make any ordinance, if it be not first discussed and approved as good and reasonable by the justices of the peace or the governors aforesaid, and being before them of record, to be revoked and repealed by them as they shall deem reasonable.

1444.

In the 23rd of Henry VI., we find upon the Parliament Rolls, a petition, that indictments should not be put in suit in *foreign* counties, but that the writs should be awarded into the county where the party was supposed to be "*conversant*" and "*demurrant*"—terms which tend to explain many of the documents to which we have before referred, and show how much the administration of the law at that time related to the *local residence* of the parties who were subjected to its jurisdiction.

1450.

In the same manner, we find it provided in Parliament, that an act then made should not be prejudicial to the grant

* Pet. Parl. 15 Hen. VI. n. 16, p. 507.

Hen. VI. made by the king to the mayor and barons of Rye, annexing for the support of the great charges of the town, the township and hundred of Tenterden to that place, and that it should not be prejudicial to the "*dwellers*" of the same township and hundred.

The following extract from the Parliament Rolls, is also of sufficient importance to justify the insertion of an abridgment of it:—

Exeter.
(*Annis incertis.*)

To the king, &c.:—Showeth, your faithful subjects the mayor, bailiffs, and *commonalty* of the city of *Exeter*, that the city is, and time out of mind hath been, an old city *corporate* of mayor, bailiffs, and *commonalty*; and the mayor thereof, for the time being, by all the said time, hath had, and used to have, the entire rule, oversight, and governance of all merchants, mercers, drapers, grocers, tailors, and all other artificers, *inhabitants* within the same, and the correction and punishment of all offences within the said city, by them, or any other person, there committed against the laws, the common weal, politic rule, and good guiding of the same city: which city, during all the said time, hath been well and quietly guided, in good tranquillity, peace, and quiet of the same, unto now of late; that the men of the craft of tailors, within the same, by supplication made unto your highness, opened your letters patent, bearing date the 17th of November, in the 6th year of your most noble reign; that they in the same city a guild, or fraternity, in the honour of Saint John the Baptist, of the men of the said craft and other, might make and stablish, and the guild or fraternity to hold to them and to their *successors* for ever; and that they, the same guild, or fraternity, might augment and enlarge, as oft and when it should seem to them necessary and behoveful; and that the *men* of that guild, or fraternity, every year might have and increase the said guild, or fraternity, and other persons that they should receive into the fraternity; and have and make a master and four wardens of themselves, as oft as it shall please them, for the governance of the fraternity for ever; and to make ordinances among themselves, as to them might seem most necessary for the fraternity; and

that the master and wardens, and the successors, should be perpetual, and have capacity; and that they, the fraternity or master, within the city and in the suburbs, might ordain and rule, and the defaults of them and of their servants, by the right of *men* of the same ministry, correct and amend, as shall by them seem best to be done. And that no *man* within the liberty of the city, any shop of the said ministry should hold, but if he were *of the liberty of the city*; nor any man to the liberty or freedom of the same city, for the ministry should be admitted, but by the master and wardens, or their successors, it being witnessed that he was good, true, and behoveful for them. And that the masters and wardens of the fraternity, for the time being, for ever, should have and make plain search in and of the ministry, of all persons that with tailors within the city and suburbs were or should be privileged, and of such mysteries that they or any of them use, or before had used; by force of which letters patent, the said men of the said craft have made a gild and fraternite of Saint John the Baptist, within the same city; and of themselves a master and *iiii.* wardyns, and have taken into the said guild, and daily done, many *inhabitants* of the same city, and divers crafts, other than of themselves, and divers other *not inhabitants* within the city, by which they be in such great number, and many of the guild and fraternity been of such wild disposition, and unpeaceable, that the mayor of the city may not guide and rule your subjects of the same, nor correct such defaults as ought by him to be corrected, according to his other duty and charge. And over this they oftentimes have made divers conventicles, commotions, and great division among your people there, contrary to your laws and peace, in evil example, and likely to grow to the subversion and destruction of the city, and of the good, sad, and politic rule of the same, without due remedy be had by your good grace in this behalf. Please it your highness, considering the premises, by the advice of your lords spiritual and temporal, and the commons in this present Parliament assembled, to ordain and enact, that the said letters patent, and every thing contained in the same, and the same guild and fraternity, and all things per-

Hen. VI. taining to the same guild and fraternity, be recalled, annulled, void, and of no force nor effect, any act, ordinance, or provision, by Parliament or otherwise made or had, in anywise notwithstanding.

Corporate. It is recited in the beginning of this document, that Exeter was “an old city corporate:”—But the charters relative to this place have been before faithfully extracted in the several reigns of Henry II., Richard I. and John:—and those charters were confirmed by subsequent kings. Upon carefully investigating them, it will be seen, that, in point of fact, Exeter had never before been incorporated, nor had such a term been applied to it: this recital, therefore, is also manifestly untrue.

Non-residents. Again we should observe, as to this document, that the evils and illegality of admitting *non-residents*, even into the guilds, is here distinctly pointed out; and the charter appears to have been declared void, in consequence of the guild having admitted such persons, to the disturbance and injury of the citizens.

Plympton. *Plympton* continued in the same situation, respecting its municipal rights, as it was in the earlier periods of our history; for in the 19th year of this reign, the king, with the assent of the lords temporal and spiritual, in Parliament assembled, confirmed to the *burgesses* of Plympton, by *in-speximus*, the charters of the 13th of Edward I., 2nd of Henry IV., 9th Richard II. and 1st Henry V., with the liberties which their ancestors had enjoyed. And in the 1447. 26th year of this reign, the king again confirmed, by *in-speximus*, the former charters.* So that it is obvious, the privileges of the borough must have continued the same to this period; excepting that this king also adds, that they should have all the free customs which the citizens of Exeter enjoyed.

Natives. But there is an exception in the charter, that the natives of the king should not, by reason of their remaining within the borough, claim any freedom without the assent of the king:—a provision unnecessary to have been intro-

* Rot. Pat. p. 1, m. 7. 2 Pet. MS. 206.

duced, because in the Regiam Majestatem, it is justly laid down, "that although a mesne lord might be barred of his claim of villainage, by residence for a year and a day in a borough, the king could not be so estopped:"—and no doubt this is so by the general principles of the law; because such a ground of emancipation is founded upon the supposed laches of the lord; and no such laches can be attributed to the king; because he is protected by the doctrine of "nullum tempus occurrit regi." Hen. VI.

A fee-farm rent is reserved by the charter, which concludes with the ordinary exemptions from tolls, &c.

COLCHESTER.

Having concluded our extracts from the Parliament Rolls, we proceed to insert some miscellaneous documents, referrible to different boroughs. Colchester—respecting which we have before inserted some documents—supplies us with important information.

Ordinances were made for that place, subsequently to those of Richard II. and Henry IV. They are without date:—but from the preamble, which much resembles that of the statute of Henry VI., as to county elections, it may be reasonably inferred, that they were made in this reign. It seems to be clear that they were prior to the ordinances of the 29th of Elizabeth. Ordinances

They are highly important in the consideration of our present subject; for they seem to define, with the utmost possible precision and distinctness, who were the burgesses at that period; and the reader will readily observe, how entirely they correspond with the doctrine before elicited from the documents as they have successively occurred in their chronological order, before this time, and which will still further be illustrated by those subsequently succeeding. Burgesses.

These ordinances provide, "that all who are *freemen* of the borough—*sworn* to the king and the town—living by their livelihood, merchandise, or crafts—*householding* in their own persons and names—*bearing also tax and talliage*, "where they fall for their parts—*lot and shot* to all reason-

Hen. VI.] "able aids in the borough—that they and each of them shall
Burgesses. "use and enjoy their liberties as *commons* of the borough."

This description prevents any possibility of doubt, as to the persons who were the *burgesses* or *commons* of the town. It may be material to consider, in succession, the various qualifications, which were necessary to entitle a person to be a burgess.

1.—"He must be a *freeman*," that is, as has been shown before, a man of "*free condition*"—a *liber homo* of the common law.

2.—He must be a "*freeman of the borough*,"—that is—being of free condition,—he must also be *of*—or *belonging to*—the borough.

3.—"He must be *sworn* to the *king*, and the *town*;" that is, every man of free condition, belonging to the borough or town, must be sworn at the court leet to the king, taking the oath of allegiance; and he must be sworn also to be true to the town.

4.—"He must be *inhabiting* in the borough or town;" because even if he were of free condition, and had been inhabiting in the borough, and had been sworn as such, upon those pre-existing qualifications:—yet if he should leave the town, he would cease to be a freeman or burgess "*or*" that particular place; and therefore it was necessary to specify this requisite of "*inhabitancy*," as an indispensable continuing qualification.

5.—"Living by their livelihood, merchandise, or crafts," was, as demonstrated before, further evidence of their being of free condition, and of their having goods within the town, from which any fines or payments due from them could be levied, and by which they might be summoned to attend at the courts and elections. And it is obvious from this qualification, that *practically*, the *persons who shared and regulated the privileges of the place, were those, who by their avocations and property, were the most essentially interested in its welfare*.

6. "They must be *householders* in their own persons or names:" that is, no person who had only a shop or warehouse,

was entitled to be a burgess; nor any person who did not actually live and reside there—as partners living at a distance—but the house must be held in their own person, and their own name, not as inmates or lodgers, or in the name of any other person. Men. VI.
Burgesses.

7. “They must be bearing tax and talliage where they fall to their parts:”—that is, they must pay their share of all public taxes.

8. “They must bear lot and shot to all reasonable aids in the borough:”—that is, they must perform, according to their own lot or turn, all public functions—as watch and ward—all public offices—constables, jurymen, &c. They must pay their scot or share of all public burdens. Murage for the repair of the walls—pontage for the repair of the bridges—chemynage for the repairs of the highways. And also for the repair of the church; and the support of the sick, poor, and impotent, who, before the statute of Elizabeth, were provided for in their respective towns out of the common stock.

Having all these important qualifications—*belonging* thus substantially to the town—as *living* and pursuing their avocations there, *sworn* to maintain the king’s peace, and abide by the law when called upon:—having their domicile there, with the numerous ties connected with their families:—bearing all the burdens of the place, both public and local; and discharging all public duties; they were properly treated as the *real inhabitants* and *burgesses of the borough*.

How can the ingenuity of man place upon the wayward wills of his fellow creatures such strong, effective, and practical restraints as by this ancient, plain and simple system of our ancestors? Why should it be superseded by the intricate, anomalous, and inexplicable mysteries of the corporation system, or by any new system, which the pruriency of modern innovation may suggest?

The persons thus described in these ordinances are to have their voices in the election of headmen and bailiffs; and the persons who are excluded are as clearly defined as those who are adopted as burgesses, viz. “children—apprentices—

Hen. VI. "law journeymen—chamber-holders, not keeping craft in
Burgesses. "their persons—nor householding by themselves—nor pay-
"ing tax, talliage, lot, shot, nor taxes within the borough."

1454.
Return.

The return to Parliament for Colchester in this year, was made by certain persons described as "*burgesses* of Colchester;" and they are stated to have elected, with the *assent* "*of all the burgesses of the town.*" Coupling this document with the description we have before had in the ordinances of this reign, and those of Queen Elizabeth, which will be seen hereafter, it is impossible to doubt who were the *burgesses* that returned the members to Parliament for Colchester at that time.

Foreigner. These ordinances also fully explain the meaning of the term "*foreigner*;" which is applied in the records of the borough to many persons living within it; they were, no doubt, those who were excepted from burgess-ship by these ordinances and the common law:—as peers' inmates—new-comers—aliens—villains—ecclesiastics, &c.

1447. A charter of Henry VI., in the 25th year of his reign, recites the charters of Richard II. and Edward III.; and grants to the *burgesses*, bailiffs, and their successors, that they should hold before them in the *mote-hall* of the town, all pleas, real, personal and mixed; and all suits and demands moved within the town and liberties. That the bailiffs and burgesses might receive all profits, rents, &c. That four of the most honest men should be, with the bailiff of the town, justices of the peace; and with jurors to hear and determine felonies, trespasses, &c. And that no seneschal, marshal or admiral should exercise their respective offices within the borough.

Shaftes-
bury.

As the records of Colchester so decisively negative, that the rights of burgess-ship in that borough rested upon any *corporate* grounds; and upon the contrary show distinctly, that they were founded upon the common law:—so, in the same manner, will the documents of *Shaftesbury* establish the same point, and also that the rights were *not* founded upon *burgage tenure*. For, although that place had long been incorporated, yet the burgesses who voted for mem-

bers of Parliament, were the inhabitants paying scot and ^{Hen. VI.} lot; and it appears from a document of this date, that the ^{1427.} borough was held by burgage tenure:—for Sir John Berkeley, knight, held by courtesy, after the death of his wife, a moiety of 33s. 10d. yearly issuing out of 10 *burgages* in the borough.

At the same period, notwithstanding it is said to have been a corporation, it will be found, that all the municipal officers were appointed under the *common law* at the *court leet*. For in the 25th of Henry VI. there is a record of that court in the 5th year of E. Bonham, abbess, speaking of William Cavent, who is called the king's *seneschal*, (or *steward*) and also of the *jury* there. The court was held after Michaelmas and Hocktide, and the title was, "Curia Legalis Domini Regis." And at the Michaelmas court, the mayor, coroners, constables, and the king's bailiff, were appointed and sworn into their offices. The *jurors* being called "*questors*," and their presentments being of those things which were inquirable at the court *leet*—consequently at that period no essential alteration had been made in the constitution of the borough, which is corroborated by the fact, that the king in this reign granted a confirmation of the charter of the 37th of Henry III.

CHESTER.

The following extracts among the Harleian MSS., from an ^{1430.} old Latin book relative to the city of *Chester*, seem also material, as descriptive of the manner of entering freemen at the port-mote court.*

Mem. That Myles Newton, goldsmith, by William Davi- ^{Admission.} son, mayor of the city of Chester, was admitted to the liberties and franchises of the aforesaid city, and gave a fine of 26s. 8d.; viz. in hand 6s. 8d., and the remainder annually, at the feast of St. Michael the Archangel, 6s. 8d., by equal portions, by the *sureties* of Robert Mercer Capper, of Richard Eldeley Capper, of George Bostock Capper, and of John Griffeley Mercer.

* Harl. MSS. 2020, p. 390 b.

Hen. VI. Many other persons were admitted in this and the following year, in the same manner, with three or four sureties.

1442. Again—It is ordered, by the assent of Thomas Thorneton, mayor of the city of Chester,* and his coadjutors, with all their whole council, that the stewards of every occupation within this city be bounden, in the name of all their whole occupation, in the sum of 40*s.*, that no manner of foreign person shall be received or reputed as a master of any occupation, unless he or they be first *franchised*. And also all such foreign persons as now do or . . . any occupation, as masters being able and of power to be *franchised*, they to . . . constrained to come *into* the said franchises. And also such persons as do occupy, buying and selling any manner of merchandise, to be constrained to come *into* the said franchise, according to the ordinance thereupon made and ordered; that is, to wit, every person being a *freeman's son* to pay for the wine and fees, after the whole use and custom. And also every *foreign* person that hath been *prenticed* within this city, and truly served his prenticeship, and his indenture thereof recorded afore the mayor for the time being, for his franchises 26*s.* 8*d.* and the wine and fees due and of custom. And also that every *foreign* person that hath not been prenticed, to pay four marks, with wine and fees due and of custom. And also that no manner of person, aliants, not born and bred within the realm of England and Wales, nor under the obeysance of the king's grace, in nowise to be taken or received into the franchise under the sum of 10*l.* or at the discretion of the mayor and his council. And also that no manner of person, being within the liberties of the Vowery in nowise be taken or received into the franchises, nor have any manner of liberties within the said city.

It will be observed, that these admissions of persons as freemen at Chester are made in the "Port Mote" court;—a term which we have before found in use in other boroughs,—particularly Ipswich.

Admission. The form of the entry is, that the party is *admitted into* the liberties and franchises—he pays a *fine*, for the reasons

* Harl. MSS. 2105, p. 270.

we have before explained—and he finds *sureties*, as the Saxon laws required. The ordinance prohibiting the admission of *foreigners*, unless they are franchised, is also in perfect accordance with the Saxon law, which prohibited the reception of any person unless they were free from charge:—and in accordance with the common law, which prohibited the reception of any fugitive *villain*;—or in other words, of any person who was not of *free condition*. And persons of that description are by this ordinance constrained to become free; because, as we have shown from the Saxon laws, as well as the early practice, every freeman was obliged to be admitted and sworn; and therefore every freeman's *son*, when he arrived at the proper age, was (as unquestionably free) bound to be sworn and enrolled, paying his proper contribution to the common stock. So also a *foreigner*, who had come into the place, and had been apprentice there, and lived more than a year and a day in the place, was therefore proveably free, under the authority of the law in Glanville; and the other early text writers:—and was consequently also obliged to come in, and be sworn and enrolled; paying his usual fine or contribution to the common stock.

Hen. VI.

Foreigners.

Villains.

Sons.

Foreigner.

And so generally all other persons coming permanently to *reside* in the town, and *received* there, were in the same manner, after a year and a day, bound to be *sworn* and *enrolled*:—the evidence of free condition as to the *sons* of freemen being only more clear and distinct than of persons altogether foreigners; but still the general law was the same as to all—that *after the residence of a year and a day they were bound to be admitted and enrolled*.

We cannot illustrate the municipal state of Chester by the exercise of parliamentary privileges at this time, as it did not then return members to Parliament, and it appears from the following document, that the *inhabitants*, upon that ground, claimed exemption from subsidies.

Parliamentary Privileges.

A supplication exhibited to King Henry VI., by the *inhabitants* of the county palatine of Chester:* that as they

1450.

* Harl. MSS. 1096, 127.

Hen. VI. have no knights, citizens, or burgesses, nor ever had from their county, whereby they might in any reason be bounden, pray a release from a subsidy voted by the then Parliament, and that the commissioners of levy be withdrawn from their county, as being against their liberties and franchises.

WINCHESTER.

1437. We find at this period,* from a MS. formerly in the possession of the corporation of *Winchester*,† an important entry relative to that city, establishing that the same anxiety as to the antiquity of the 24, prevailed in that place as in Colchester, from the fact of a similar wilful interlineation appearing upon their records:—no doubt made for the purpose of giving the semblance of usage as a justification for perpetuating the usurpations which were introduced.

In the oath which was prescribed to be taken by the mayor, we find part of the original writing has been erased, and “*xxiv of the citie*” inserted; and if any additional proof was requisite to establish that the interpolation was made at a subsequent period, the spelling of the word “*citie*” would suffice: for at the commencement of the oath it is spelt, as it had been in all the previous entries in this MS., and as the word was then generally used “*cite* :”—and not as in the interpolation “*citie*.”

The MS. seems to have been perused by some person who was particularly anxious to draw attention to every entry relative to the mercatorial guild; and whenever the words “*Cives Wynton de gilda eorum mercatoria*” occur, they are scored under, and a representation of the human hand is made in the margin, to direct attention to the passage. The oath is as follows:—

* Additional MSS. British Museum, 6036, p. 19.

† This is a vellum manuscript of entries, relating to the principal events that occurred in Winchester, chiefly in Latin and Norman French, commencing from the reign of Richard II. to that of Henry VI., formerly belonging to the corporation of that city, but now in the British Museum. The public are indebted for the possession of this MS. to the learned discrimination of Sir Henry Ellis, who purchased it at the sale of the late Rev. John Price, the principal librarian of the Bodleian—but our attention was, in the first instance directed to its contents by Sir Frederick Madden.

"I shal observe and kepe alle statutis and usages of oure
cite, and alle ordynaunces confermyd of oure predecessors
 ymad by fore thys tyme ne now offis discharge ne ministre
 ne officer chaunge ne non make newe wyth thoughte asent
 of the *xxiv* of the *citie*, bute by my power trwelich put
 them in excussion. So God help me at the holy dom, &c."

Hen. VI.

Oath.

The records of Winchester at this period, afford us another
 very important fact, similar to those which we have already
 presented to the attention of the reader respecting North-
 ampton and Leicester;* from whence we have been ena-
 bled indisputably to prove the illegal encroachment of a
 select body upon the constitutional rights of the free, per-
 manent, and responsible inhabitants; for in the valuable
 MS.† to which we have so recently alluded, we find an ordi-
 nance in Latin to the following effect, which commences
 with a recital, that, "By a *common* and general meeting,
 had and held at Winchester, upon the 24th day of January,
 in the 34th year of the reign of Henry VI., at which William
 Smyth, mayor, his compeers, and the *commonalty* of the city,
 found many mischiefs had happened in past times, and did
 daily arise, so that the citizens of the city were daily com-
 pelled to have convocations of the citizens, to their great
 detrimen:—therefore it is provided by this convocation,
 and by the unanimous consent of all who were inter-
 ested; and by their assent, concord, and agreement, that in
 all future times the mayor, with 16 of the 24 (*ex parte* 24),
 by him elected, and hereafter by his successors, mayors, to be
 elected, whose names for the present election are hereunder
 written, to wit, (here follow 16 names), with other 18 citizens,
 upon the part of the *commonalty* to be elected, and at future
 times to be elected, the names of which 18 for the present
 election are likewise hereunder written, to wit (here follow the
 names of 18 persons), should have full and entire authority
 and power to counsel, treat, order, enact and determine, for the
 common utility and profit of divers persons *coming*, and for
 the honesty of all, and of the whole *commonalty dwelling*

1445.

* Vide ante, p. 229 et seq.

† 28 B. Additional MSS. British Museum, 6036.

Hen. VI. in the said city this year, and in future times, by the aid of God, strictly and firmly to be made.

HYTHE.

Uniformity
of Records.

As the entries in the different boroughs were made by different persons, without any communication, and at a distance from each other, it is not to be expected but that there will be some slight variety in the form and immaterial parts of their records; but the important point which should always be regarded is, that in whatever part of the kingdom, however remote from each other, and under whatever differing circumstances the several boroughs might be placed, the substantial nature of all their records will be found to be the same.

Thus Chester, an exempt county palatine, in the north—Hythe, a cinque port, in the south—Wells, a place of ecclesiastical origin in the west—and a variety of other instances which might be enumerated, will be found by the reader to produce records substantially similar.*

With this view we insert the following extracts from the documents of the borough of Hythe:—

1447.
E. 10. 27 a.

Be it remembered, that on Sunday, the day of the translation of St. . . . came Thomas Erpelon and William

Birth. Tory, as *freemen* by *birth*; and they were *sworn* to the lord the *king*, and to the *town*.

And Dennis Fraunceys, born at Sellyng, appeared as a Marriage. freeman, by the *marriage* of a daughter of John Walvyn, and he was *sworn*.

And Thomas Scryven came on the eve of St. John the Baptist as *free* . . . and he was *sworn* to the lord the *king*, and to the *town*. And Stephen Marshall appeared Birth. on the Feast of the Reliques, as free by *birth*, and he was *sworn* to the lord the *king*, and to the *town*.

And John Scharp, born at Godmersham, appeared on the 24th day of January, as free by the *marriage* of the daughter of William Breche, a freeman; and he was sworn to the lord the *king*, and to the *town*.

* See also Yarmouth and Lynn.

And Thomas Metcalfe came, and was sworn to maintain Hen. VI.
the franchise, *although not free* (scilicet—non liber.)

And Thomas Vigerows, and Thomas Maryner, appeared
and were sworn, *although not free* (scilicet—non liber.)

And William Vrode, appeared on the last day of January, 1450.
a° 29, as free by the *marriage* of Jane, the daughter of
Henry Bocher; and he was sworn to the lord the king, and
to the town.

And John Colman appeared on the 26th day of January 1452.
a° 31, as free by the *marriage* of Alice, the daughter of John
Sare; and he was sworn to the lord the king, and to the
town.

And Henry Wareyner appeared on the 19th day of Ja- 1453.
nuary, a° 32, as free by *birth*; and he was sworn to the
lord the king, and to the town.

And John Downe, the younger, appeared on the 2nd day 1454.
of November, a° 33, as free by *birth*; and he was sworn to
the lord the king, and to the town.

And Ralph Canteys appeared on the 26th day of Feb^r, a°
33, *as free as he can be (ut liber quantum potest esse)*, because
he was born in Normandy, by Johan, the daughter of Wil-
liam Longe; and he was *sworn* to the lord the *king*, and to
the *town*.

And John Chere, alias Dokene, appeared as free by *mar-*
riage; and he was sworn to the lord the king, and to the
town.

And Robert Gybbe came into the common hall on the 1460.
21st day of January, a° 39, before the *jurats*, as free by the
birth of his wife, the daughter of Hamon Hampton, and born
in the town; and he was sworn to the lord the king, and to
the town.

And John Baydyll, alias Cauvere, the younger, came into
the common hall on the 26th day of January, a° 39, before
the *jurats*, as free by *birth*; and he was sworn to the lord
the king, and to the town.

And John Colle, the son of Martin Colle, came into the
common hall on the 30th of January, a° 39, before the *jurats*,
as free by *birth*; and he was sworn to the lord the king, and

Hen. VI. to the town. And there are several other entries of the same description, from which the above have been selected as specimens.

Birth.
Marriage. Here the same grounds for the recognition of freemen occur, on account of *birth* and *marriage*, as we have met with before in several boroughs scattered over every part of the country, and deducible from our earliest usages and laws; and these qualifications are connected with the being *sworn* to the *king* and to the *town*, as practised in the court *leet*. One or two individuals appear to have been sworn on the ground we suggested in our observations upon the Chester documents; although they were not proved to be free either by birth or marriage:—and one is expressly described to be “as free as he could be,” because he was born in Normandy: but still if he had *resided a year and a day* in the place, he was *bound* to be *sworn* and *enrolled*, unless he set up his alienage as an excuse, or it was objected to him.

It must be observed, that at the commencement, the admissions are made in the *public court*, and the parties were *sworn* to the *king*; from which it may be inferred, that it was at the court *leet*. Afterwards they were at the common hall; and subsequently the *jurats* seem, as the jury, to have exercised the right of having the parties sworn before them. These successive alterations occur also in other places—and gradually introduced the usurpations upon which the exclusive system was in after-times so unconstitutionally established.

1455. In this reign there is a record, in which the Archbishop of Canterbury, upon the surrender of Henry Fitz-John of the office of bailiff of the bailiwick of the town of *Hythe*, granted that office to the *jurats* and *barons* of the town during the life of Fitz-John; with power annually to elect from amongst the barons one fit baron *dwelling within the town* to be bailiff.

Jurats. And as illustrative of the assertion we have before made, that the *jurats* were the *jury* or *sworn men*; and that the *barons* or *burgesses* were the *denizens* and *resiants* within the place;—who were often called, as in other boroughs, by

the name of *commonalty*—we insert the following document. Hen. VI.
A. fol. 19 b.
1541.

“Memorandum at a *Brodhill*, holdyn at Romene the Tews-
day next after the weke of Easter, the yere of the reigne
of King Harry the VIth the 30th. It is ordeyned by all the
brotheryn att the seid Brodehil beyng, that ther schall *no*
baron of the five ports from henceforth be elected into the
Parliament or to Yeremouth; but if he be mayor, bailiff or
sworneman of the towne, that he is *chosen by denisen and re-*
siant within the said town; and that no mayor, *bailiff, jurats*
and commonalty make otherwise their election nor return
uppon payne of 10*l.*, to be had and payed, and had of every
towne of the five ports the contrary doinge, to the use and
common profit of all the remnant of the towns. This said
act concerning moreover, that, if any other be chosen in con-
trary of these premises, that the election of him to be voide.
And if any also in other form be chosen, that he or they shall
have no fees nor wages of the said towne so unduly chosen.”

TRURO.

The return to Parliament for *Truro* was at this time “pro Truro.
1432.
communitate burgii.”

There is no pretence whatever for saying that Truro was then a corporation; these words therefore must be intended to be applied to the *commonalty*, or whole body of the borough: that is, the burgesses who were to enjoy the privileges under the charter of Reginald de Fitzroy, and who are described in the recital of Queen Elizabeth’s charter as the “*inhabitants*,” for they are said by her to have enjoyed those privileges, and they are by her incorporated, and directed by her to enjoy their franchises for the future.

PASTON LETTERS.

The return of members to Parliament having become at this period of our history a matter of political importance and of public interest—as indicated by the number of people attending the elections, which is noticed in the preamble to the statute of the 8th of Henry VI., limiting the right of election to the 40*s.* freeholders—the great men of the nation 1455.
Members
to Parlia-
ment.

Hen. VI. appear to have interfered in the election, and to have interested themselves as to the persons who were to be returned as members.

Thus we find in the Paston Letters,* one from John de Vere, Earl of Oxford, to Mr. Paston, who was a gentleman of property in Norfolk, dated 18th of October, 1455, informing him that Richard Plantagenet, Duke of York, and John Mowbray the Duke of Norfolk, had met at Bury, and that a gentleman of the Duke of York had taken to a yeoman of Mr. Paston's, a schedule of the duke's intent whom he would have knights of the shire for the county of Norfolk, and the names were Sir William Chamberlain and Henry Grey.

1460. From another letter in the Paston collection, of this date, from Richard Call to John Paston, the writer states, that "on Childermas-day there were much people at Norwich at the shire (the county court,) because it was noised in the shire, that the under-sheriff had a writ to make a new election; wherefore the people were grieved, because they had laboured so often; saying to the sheriff, that he had the writ, and plainly he should not away unto the time the writ were read.

"The sheriff answered and said, 'he had no writ, nor wist 'he had it.' Hereupon the people peaced and stilled unto the time the shire was done; and after that done, the people called, 'Upon him! kill him! head him!' And so John Damme, with help of others, got him out of the shire house," &c.

From which we may infer the great interest which the people at large at this time took in the election of members to Parliament; as appears also by another letter from William Price, the under-sheriff of Norfolk, to John Paston, in the same reign, in which he informs him, that, "as for the election of the knights of the shire in Norfolk, in good faith there had been much to do; nevertheless, to let you have knowledge of the demeaning—my Master Berney, my Master Grey, and ye had greatest voice; and I purpose

* Vol. i. p. 98.

“ me, as I will answer God, to return the due election, that
 “ is, after the sufficient you and Master Grey—nevertheless,
 “ I have a master.”

Hen. VI.

Before we finally close the miscellaneous documents relative to this period, we should observe, that the ecclesiastical bodies had, from the earliest periods, under the civil law, been considered as incorporated, and enjoyed their rights and privileges by succession; but it does not appear that the *language* of incorporation, which was borrowed from the ancient guilds and fraternities, had been applied to ecclesiastical bodies.

Ecclesiastical Bodies.

About this period, however, and subsequent to the charter of Hull, and the incorporation of Plymouth, terms of incorporation are used in grants, to ecclesiastical and eleemosynary bodies.*

A grant to the *priory of Cicester*, in the 33rd of Henry I.—
 to *Dunstable* in the same reign—to *Colchester* in Richard I.
 —to the prior and canons of *Bodmin*, in the 57th of
 Henry III.—and to an hospital at *Nottingham*—and also to
 the Holy Trinity at *Salisbury*—and to an hospital at *Oakham*,
 in Rutlandshire—contain no words of incorporation. But
 in the 23rd year of this reign, there is a grant to Saint Paul’s,
 that they might plead by their *corporate* name, purchase lands,
 and have a corporate seal.

1133.

1273.

1244.

In the 15th of Henry VI., there is a licence to found an
 hospital at Ewelme, in Oxfordshire, and that it should be a
 body *corporate*; and in the 21st of Henry VI., an hospital
 at Toddington, in Bedfordshire, is made a perpetual com-
 munity and body *corporate*. This system then became
 prevalent.

1437.

1443.

YEAR BOOKS.

We proceed now to the Year Books of this reign, which being the period when municipal corporations were first introduced, will require rather a minute investigation; and we shall give considerable extracts, in their chronological

* Vide Dugdale’s Monasticon, *passim*. 7th Year Book, fol. 12 B.

Hen. VI. succession, in order that the reader may have a clear and distinct view of the manner in which the subject unfolded itself: and by seeing the records in the order in which they actually succeeded each other, may rely, with certainty and confidence, upon the inferences ~~legitimately~~ drawn from them.

The King. The nature and extent of the king's prerogative, with reference to the subject matter of our inquiry, may be in some degree collected from the following extract.

1422.
Fol. 6 B. "Every franchise commences by the grant of the king to the lord of the franchise. If in any return, the bailiff of a liberty is mentioned, and it is not said whose franchise it is, he shall be *intended to be the bailiff of the king*, and the franchise to be in the hands of the king."

1429.
Fol. 25 A.
pl. 11. It afterwards appears, that the king can only grant by record; for it is laid down, that "*nothing passes from the king without matter of record.*"

Corpora-
tions. We next find a case, in which there is a reference in the margin, to Brooke's Abridgment, title "Corporation;" but the word does not occur in the text: and that the reader may be fully acquainted with the nature of the case, we shall give a somewhat lengthened statement of it.

1423.
Fol. 9.
Abbot. "In *scire facias* in the King's Bench, by the abbot of Westbury, against the *commonalty* of the town of *Shrewsbury*, the count was upon a composition, by deed indented, between the *predecessor* of the abbot, and the *commonalty*, for the reparation of certain mills, which the commonalty ought to repair when necessary; and it was shown how upon the composition, the *predecessor* of the abbot, had brought a writ of covenant against the *commonalty*, for non-repair of the mills; and the record was produced upon which this *scire facias* was brought. *Rolfe* said, The writ is brought against the *commonalty* of S—, but on the day the writ was brought, there were two *bailiffs* of the town, therefore the writ ought to be against the bailiff and the commonalty. *Strange*.—It does not appear that they had bailiffs at the time of the composition made; nor at the time of the record; but it seems the writ is abateable; for notwith-

standing there was no bailiff at the time of the composition made, nor at the time of the writ of covenant brought, nevertheless, the king having made *bailiffs*, who are the *chief of the town*, and the *commonalty* under them, the commonalty cannot be impleaded without their bailiffs, any more than without a mayor; as at London, the commonalty cannot be impleaded without their mayor, and where there are *bailiffs* of a city, they are *as mayor*. *Cheine*.—The commonalty of a town, when there are neither bailiffs nor mayor, grant to me an annuity of 20*l.*; and then the king makes bailiffs of the same town; I shall bring my writ of annuity against the commonalty, omitting the bailiffs or the mayor; that the writ may agree with the specialty; otherwise it would be abateable. So here, the action is brought upon a writ of covenant, against the commonalty only. It is a judicial writ, founded upon a record, and should be in accordance with it. *Hankford*.—The writ is abateable, for we will put a common case: a feme sole grants to me an annuity, and then takes a husband; shall the writ for this annuity be against the woman, omitting the man? I say not:—a feme covert can in no case be impleaded in our law, without her husband. Let us suppose that a chapter, when they have no dean, grants to me an annuity; and then the king makes a dean; the writ of annuity shall not be brought against the chapter, omitting the dean: for the dean is sovereign of all the chapter; and the chapter, in law, is covert by the dean, as a woman is covert by her husband. Thus here the *commonalty* of a town is under the *bailiffs*, or the *mayor*. *Strange*.—Supposing one makes an acknowledgment to me of 10*l.*, by the name of squire or knight; and after he is made a duke; I should have scire facias against him of this recognizance, by the name of duke, and not by the name of knight, in accordance with the recognizance. So here, notwithstanding, the bailiffs were not parties to the record in the writ of annuity, forasmuch as that the commonalty could not be impleaded without them, it is necessary that they should be named. *Troweth*.—Suppose in the time of vacation of an abbot or of a prior,

Hen. VI.

Mayor.

Dean.

Abbot.

Hen. VI. that the convent is bound to me under the common seal, for 100*l.*, which I have lent them for the profit of the house, and then an abbot or prior is chosen, my writ will be against the abbot and the convent; notwithstanding the abbot is not named in the deed, and so here. *Paston*.—Suppose that I recover debt or damages against a man and feme sole; then they intermarry; then I sue execution upon this recovery by scire facias; the writ would be scire facias to such a one, and such a one his wife; and not to such a one, and such a one by the strange name, in accordance with the recovery; by the marriage, the woman lost the name she had at the time of the recovery; but it is fit that she should be bound in accordance to that name which she had then:—so here it is fit that the writ should be against them as they were then; that is, against the *bailiffs* and the *commonalty*. *Westbure*.—Suppose the parson of a church, and the patron, and the ordinary, grant to me an annuity out of a church; and then the church is appropriated to an abbot; notwithstanding the appropriation, my annuity is not extinct. Suppose the annuity to be in arrear; my writ of annuity will be brought against the abbot, although he is not a party nor privy to the deed. *Rolfe*.—Suppose the *commonalty* of S—— were now to bring a writ of right of these lands; and it appeared, that they should have *bailiffs* in the same town; would the writ be brought by the *commonalty*, omitting the *bailiffs*? I say no. And if the recovery was in such a manner, it is error; notwithstanding your writ was brought against them, of a thing commenced by them before they had any bailiffs. *Cott*.—It seems to me the contrary, and that the writ is good; and that there is a diversity where, at the time of the grant by the commonalty, they had bailiffs; and when they had none:—for if they have bailiffs, and the commonalty grant in that manner, and the bailiffs are no parties to the grant, I say the grant is void; but if at the time of the grant, they had no bailiffs, the grant by the commonalty is good, as in the case at the bar—when at the commencement, the grant was good by the commonalty; and the king made bailiffs; then a good writ can be main-

tained by the name of dignity; for *in this word commonalty, is included the bailiffs, and all the commonalty*; for the *bailiffs of a town are not exempt from the commonalty, or separated*:—for during the time of their office they are persons of the commonalty, as every other of the town. To name them in the writ, would be superfluity; for then they would be twice named. Et adjournatur.”

We have already seen, that the reference to Brooke, title “Corporation,” was frequently made in the margin of the Year Books, during the reigns of Henry IV. and Henry V., although there was nothing in the text relative to such bodies. So here we have the word “corporation” for the first time occurring in the margin in this reign; although in the context there is no other reference to that subject than the use of the term “commonalty;” which has already been explained as not importing, in our early documents, a corporate body. On the other hand, it was applied to every aggregate body in the country—the clergy—the laity—the commonalty of the realm—the county—hundreds, and even forests. And here, although mayors, bailiffs and the commonalty, are frequently referred to, there is no allusion whatever to the modern doctrines of corporations; but on the contrary, the case is throughout argued with reference to the analogous cases of individuals—as men and women, married and unmarried—baron and feme—abbots, priors and deans. And had any of the principles now adopted as to corporations been then in use, it is impossible this case could have been discussed, in the manner it was, without reference to them. It affords, therefore, the strongest possible reason for inferring, that even at this late period, the law of corporations now in use, was not then adopted, nor even known.

In a subsequent case, the *mayor* (maire) and *bailiffs* of *Oxford* demanded cognizance of a plea.

Oxford.
1424.
Fol. 10.

The case is discussed at much length, but there is no reference whatever to their being a *corporation*.

In fo. 14 b, the same occurs as to the city of *Gloucester*, Gloucester where, as in the last case, there is no reference to their being

Hen. VI. a corporation; the bailiffs only, and "*those of the town*," are mentioned.

Bristol. In fo. 30 b, the same occurs as to the maire and burgesses of *Bristol*.

Shortly afterwards, in the same book, we find an entry of a different description: pointing out distinctly at what period the doctrine of corporations was expressly applied to municipal bodies.

Fol. 43. Commonalty. "The commonalty of the town of N. brought an assise of novel disseisin against the Abbot of Bermond and Rich. Willes, and others, in the county of D. And the *commonalty*

Attorney. appear by attorney. And for R. Willes it was said, that he who appointed the common attorney for the commonalty, was one of the same commonalty; which is a thing *corporate*, not several; in which case he could not appoint a common attorney by himself. And for the abbot it was said, that the writ was brought by one of the commonalty; which is but one body; for which we pray judgment; and they are without a chief mayor or bailiff named with them in this writ. And so the matter was adjourned."

Mayor.

This case is important to the subject of our present inquiry:—as, notwithstanding there had been many charters of incorporation, this is the first place in any of the law writers or reports in which it is asserted, that a commonalty is a body corporate; and the first instance in which there is any allusion to the doctrine of corporations, as applied to towns.

It will be important also to remember, that there had been no charter before this time in which the burgesses, or the commonalty, or any other such body, had been incorporated; and it has been seen, that it is not till nearly 16 years after, that any municipal body receives such a grant: Kingston being the first town incorporated, in the 18th of Henry VI.

1425. Fol. 6 B. M. T. Oxford. In another entry in this Year Book, the charter of King Edward to the maire and burgesses of *Oxford*—exempting them from serving on foreign juries—and that foreigners

should not be on juries within the town—is mentioned. Hen. VI.
 And also the “*men of the town*” (le persons de la ville). Men of the town.
 Yet nothing is said in the case of their being incorporated, although there is in the margin a reference to Brooke’s Abridgment—title “corporation.” It seems, therefore, that this doctrine of corporations, which was first broached in E. T. 3 Henry VI., had not at this time made any considerable progress, and was not generally recognized. Corporations.

In a case by the prior of Montague against a defendant, who had been fined as bailiff of a *leet*, for not impannelling a jury, it is said, “that *the court leet is the most ancient court in the land* :”—and reference is made to its extensive jurisdiction. Leet. 1428. Fol. 12 B. M. T.

It is also stated, that “it is against common right for the bailiff to impannel persons as well *out* of the town, as *in* the town; for by that means the bailiff would extend his power.”

From this entry the original antiquity and importance of the court to which such frequent reference has been made, is clearly established; and the local limits of its jurisdiction distinctly confined to the precinct in which it exists.

A writ, *de nativo habendo*, occurs in the county of Bucks. And a *latitat* being issued thereon to the sheriffs of London, they returned, that “the city of London is the most ancient city in the realm, and the chamber of the king; and that it is the ancient demesne of the king; and had the *custom* from time of memory, that *if a man remained in the city for a year and a day,* he should not be taken nor sent forth by writ de nativo habendo*,” &c. Nativo habendo. 1428. Fol. 31 B. E. T. London.

And it was said, that “this custom was against reason and common law, for that it was prejudicial to all the realm.”

It was also denied that “London was ancient demesne, because it did not so appear by Domesday Book; and the treasurer and barons of the Exchequer certified that it was not so.”

But it was further said, that “the liberties of London had

* See Glanville, Regiam Majestatem, Fleta, Britton, and Mirror, et post. 35 Hen. VI. Mic. T. fol. 5 B. 37 Hen. VI. T. T. fol. 26 B.

Hen. VI. been confirmed by Parliament." And it was observed, that "the *sheriffs* for the time are *chiefs of the city*, and wardens and protectors of their liberties and customs."

Kent. It is also stated, that "in the county of *Kent* they have such a custom, that any person *born* in the county, notwithstanding that his father was a *bondman*, would be *free*."

And it was said, that "the writ de nativo habendo was of right."

Fol. 3 B. This case is afterwards continued in the 8th of Henry VI., and from its discussion it appears, that the doctrine of Villainage. *villainage* was at this time in full force. And we find that London claimed as a special custom, that those who resided for a year and a day should be free, which is stated in Glanville, and the other early text writers, as the general law of the land; upon which remarks have before been made.

London. The importance of the city of London—its antiquity—franchises—extensive jurisdiction—and the dignity of its officers, also appear.

Wards. In folio 35 it is said, that "the wards in London are as hundreds in the counties:"*—which clearly shows, that the towns were carved out of the counties, and were, like them, subject to analogous subdivisions.

Parish. In folio 36 b, the same is repeated, and that "a parish is as a vill."

Folio 40. In an assise it was stated, "that part of the lands were in a *franchise* which had *return of writs*, and the others were *gildable*; and one pannel was returned by the *bailiff* of the *franchise* which had the return of writs, and the other by the *sheriff*; and one was sworn of the *franchise*, and the other of the *gildable*."†

Here we have the county at large, under the general name of the "*gildable*,"—or that which paid and contributed altogether: contradistinguished from the towns and franchises—which paid separately by themselves.

Norwich. "In a case of trespass against the *mayor* and *bailiffs* and
1429.
Fol. 1.

* Vide post. Year Book, temp. Hen. VII.

† Vide post. 32 Hen. VI. fol. 8 B. Et vide etiam, fol. 14 B.

the commonalty of *Norwich*, and one J. Jabe, the plaintiff ^{Hen. VI.} claimed to be quit of toll. The mayor and bailiffs, and Jabe, had retained certain beasts of the plaintiff's for toll, to pay to the mayor; and judgment was prayed of the writ; because J. Jabe was, on the day of the writ purchased, and the day of the supposed trespass, one of the *commonalty*; and thus he is three times named. Judgment of the writ, &c.

“*Martin*.—It seems to me the writ will abate, for he who by this writ is thus named for one and the same trespass, may be twice charged; for if he were found guilty, he would be so on a charge for his own wrong; and if the *commonalty* were found guilty, he would be again charged as one of the commonalty; which would be inconvenient. And suppose that *he* was found not guilty, and for so much excused; and the *commonalty* were found guilty, and for so much chargeable; thus, by one inquest he would be found guilty, and by the other not guilty, which cannot be, &c.

“*Paston*.—It seems to me the writ is good, for perhaps the same J., who is named by his own name, claims the toll in common with the commonalty by another title than as one of the commonalty, and makes the trespass without them in his own right, and not as one of the commonalty; in which case the writ would seem to be brought in form; for if there were but ten persons in the commonalty, and they took the goods by other title than by reason of their *corporation*, it is proper to bring the writ against them by their own names; and if J. did wrong to us of his own act, and not as one of the commonalty, although together with the commonalty, and he is sued by such a writ, and judgment is obtained against him for damages, if execution could not be had, of the goods of the commonalty, nor of the singular goods of each, it would be a mischief, when he did the wrong from his own act in claiming the toll as his right, &c.

“*Martin*.—Your case is not my law; for, in that case, I should have execution of all the goods, as well the separate goods, as those of the commons; otherwise it would be inconvenient, for, if they only had goods in common, I should sue without recovery. And it is the common

Hen. VI. course in the King's Bench, that, if a commonalty be amerced, the amercement will be levied of all the goods, &c. And for another cause, it seems to me the writ is bad. For against the mayor and the commonalty is attachment and distress infinite, and against J. the process of outlawry; thus several process; which cannot be joined in one writ.

"Babington.—The case put by *Paston* is law, as it seems to me; for there is a great diversity between the king and any other person:—for the town, and the land of the town, and the goods on the land, are chargeable to the king: and the law is the same for the fee-farm of the king. But in our case the execution ought to be warranted by the judgment; and that was given against the commonalty, and no separate person is charged, nor any several goods.

"Strange.—As to the suggestion, that perhaps J. may claim the toll by other title than as commoner, the writ goes to that. For it supposes that the mayor, &c. and J. took, &c. for toll payable to the mayor, bailiffs, and commonalty, and therefore the supposal of the writ is, that J. claims nothing. And as to the other collateral case, it seems to me, that the common goods would be taken in execution, and none other; for although there are many taken in the writ, and the judgment given against them as against the commonalty, yet they are one and the same body, and the goods of the body against whom the judgment is given, would be taken in execution, and no others; for the several goods are not the goods of the commonalty: and no person by himself is the commonalty, but their aggregate body; and these goods are chargeable, and no others, &c. And it was said, that if a commoner disseises to his own use, and a release is given to the mayor and commonalty, &c. nothing will pass by that release, &c. 20th Henry VI. 9."

In the further discussion of this case it was said by the Court, that "the commonalty could not make disseisin nor tort if it were not for their own benefit; nor a feme covert for the benefit of the husband;" but if such a disseisin was made, the writ should be against each by the proper name. Also, in case the bailiffs and commonalty, and one by his

proper name, who is in fact one of the commonalty, should be bound in an obligation, the party shall have his action against the bailiffs and the commonalty, and against the other person by his proper name. Hen. VI.

“Paston.”—If the mayor and commonalty of London disseise one of the commonalty, he shall have his assise against the mayor and commonalty; and recover his seisin and his damages against the mayor and the commonalty, notwithstanding he himself is one of that body. 1429.
Fol. 14 B.
M. T.

“Rolf.”—The defendant in the brief here, is named by his proper name, and made the trespass singly, and not as one of the commonalty; for as it has been said, in case the toll was granted to J. and his heirs, and to the bailiff and commonalty and their successors, and that according to it they took the beasts by wrong, it is proper that J. should be found guilty in that form; and then, if the plaintiff recovers, he shall have execution of the separate goods of J. And if a trespass was made by two, the law will not that the writ should be against one alone. And so is the case here, the trespass is made by the bailiffs and commonalty, and J., who are two; but J. is one of them, for he is one of the commonalty—for, in a brief brought against the commonalty, a release by the plaintiff to one person of the commonalty cannot be pleaded, nor to 300 of them: because no one of them is the commonalty. Then, if the commonalty and J. make a trespass jointly, or J. in his own right, and the commonalty in their right, the trespass of J. cannot be called the trespass of the commonalty; nor is there any reason that the commonalty shall be charged for it. Therefore it is reasonable that he should be named by his proper name, whereupon his separate goods ought to be charged, together with the goods of the commonalty.

“Rolf.”—In the case of one of the commonalty of London bringing an assise against the commonalty, inasmuch as that he is plaintiff—he is severed from the commonalty in that suit:—therefore the case is not like the present.

“Martin.”—In trespass done by two, I shall have a writ of trespass against one alone; and so it seems to me in trespass

Hen. VI. the release made to one of the commonalty would be a good bar."

It is obvious from the whole context of this case, as well as that in the 2nd of Henry VI., fol. 10, that the modern doctrine with respect to corporations, and their rights and liberties, was not at this time defined or understood; and it is therefore impossible that the charters in the reigns of King John, Henry III. and the Edwards, could have been, as they are often supposed to be, charters of incorporation: for, had they been so, the doctrine of corporations must have been, between that time and the reign of Henry VI., fully established and generally known; particularly amongst the lawyers. But it is clear from this case that it was not; and, therefore, the direct inference is, that municipal corporations were not at this time in existence; and the subsequent documents in this reign have shown, that the rules of the civil law, borrowed from the ecclesiastical corporations of priors, abbots, convents, deans, and chapters, were about this time applied to aggregate municipal bodies; and the legal necessity of their being more generally applied to them, being at this period evolved by the practice of the courts, and the discussion which then took place, application was made to the crown, as in the instance of Plymouth, to make the municipal bodies corporate; in order that they might enjoy their rights, possessions and privileges by corporate succession: which they had before held without being incorporated.

Oxford
University.
1429.
Fol. 18 B.

In another case, the charter of Henry IV. to the *chancellor of Oxford*, and his *successors*, granting that they should not be sued, in writs of oyer and terminer, was pleaded—and conusance of the trespass claimed by the chancellor, the defendants being clerks of Oxford, and their servants residing there.

It was questioned whether such a grant could be good—for "that the king could not grant that a person should not be impleaded;" but it was answered, "that the king might grant that he should not be impleaded, but in a particular place." It was also said, that *all the liberties and*

franchises of England, were in the crown, and derived from Hen. VI.
the crown.

“*Cottesmore.*—Suppose that consuance of all manner of pleas in St. Alban’s, was granted to the bailiff of that town; and a writ was brought against one of the town; and the bailiff demands cognizance of it, and it was granted him; and afterwards the same person, against whom the writ was brought, was bailiff of the same town—I say that in that case, the plaintiff shall have a re-summons, because the *plaintiff cannot be his own judge.*

“But this was denied by *Rolfe.*

“It was also said, if the king grant to a man, that he shall have all the fines and amercements forfeited to him within a certain county; and the same person, is *residing* in the Residence. same county, and should be amerced in the court of the king, he shall not have his own amercement, because it *shall not be intended that such was the intention of the king, &c., &c.*”

It must be observed, that in this case, there is a reference in the margin to Brooke, title “Corporation,” although, in fact, throughout the case there is no mention of corporations in general, nor of their peculiar doctrines. Corporations.

The fine referred to is made to depend upon the *residence* Residence. of the party in the county, where the grant of the forfeitures is given. It must therefore be inferred, that grants made by the king to a particular place, or to the *men of the place*, meant the persons *residing* or *inhabiting* within it; the propriety of which inference, has been already shown by the former documents.

“A writ of account was brought against a man of London.

1429.
Fol. 25,
H. T.

“*Rolfe* prayed judgment of the writ, because he said that at the day of the writ purchased, the defendant, his wife, children, and household, were *conversant* and *resident* in Dale, in the county of Middlesex, and not in London.”

This case is important to show what was at that time esteemed *residence*; it depended properly upon the domicile, or the abode of the individual, his wife, children and household.

“In trespass against two for taking a horse it was pleaded,

Fol. 27,
H. T.

Hen. VI. that the same plaintiff had sued a replevin for the same, taking against the mayor and *commonalty* of the town; and that the defendants were *residents* in the same town, and one was of the *commonalty*."

The remainder of this case is not material, but the above allegation goes strongly to show, that being of the *commonalty* was the consequence of being *resident* in the town, according to the doctrine we have asserted, and supported by our earliest laws and most ancient usages.

Common-
alty.
1431.
Fol. 36 B.
M. T. "Trespass against the bailiffs and *commonalty* of I. and against A. A. says that he is one of the *commonalty* for which he prays judgment of the writ; because he is named twice.

"*Martin*.—The writ shall abate, because he might be charged twice; as well of his proper goods, as of what he had with the *commonalty*.

"*Babington*.—His fine which shall be levied of his proper goods; and the fine of the *commonalty* shall be levied of the goods which are in common, and not of the goods which in severalty. So he will not be charged of his own goods twice. And so if one of the *commonalty* disseise me, and afterwards enfeof the *commonalty*, I shall have an assise against the mayor and *commonalty*, and against him who disseised me by his proper name.

"*Paston*.—If a man enfeof the *commonalty*, and one of the *commonalty*, of land to which I have right, I shall have an action against the *commonalty*, and the individual, because in these cases he is a private person.

"*Martin*.—Perhaps, it would be good, because they are joined, and yet their inheritance is several; and if the *commonalty* were attainted, the goods named by special name would be taken in execution.

"*Paston*.—None but the goods of the *commonalty*; but if he is attaint, and the *commonalty* also, then the law is otherwise.

"*Martin*.—This writ alleges that he took the goods of the plaintiff for toll where he ought to pay; therefore it is in right of the *commonalty*; for which it is not reasonable that he should be punished twice.

"*Paston*.—If the bailiff and the *commonalty* command one of the *commonalty* to do an act contrary to law, an action lies against the *commonalty*, and against him who did the trespass."* Hen. VI.

The observations made upon the former cases in this reign apply equally to this.

A writ of waste assigned amongst other things, that "two *neifs* had been manumitted, and were allowed to go out of the town." Neifs.
Fol. 42 B.
M. T.

Babington said, that "the *court of frankpledge* was the most ancient court;" and mentions the extent of its jurisdiction. Frank-
pledge.
Fol. 44 B.
M. T.

There is a claim that the defendant, and all those whose estate he had in the manor, were seised of the plaintiff, and his ancestor, as *villains* regardant to the same manor. Villains.
Fol. 67.
H. T.

It was also said, that "the *steward* is a judge of record; and the *court leet* the court of the king;" the extensive powers of which are enumerated. And it is stated, that "all the tenants who are *inhabitants* within the leet should be charged to come to that court." Leet.
1432.
Fol. 7.
M. T.

The term "tenant" here requires some observation, as it might otherwise lead to error. Taken with the explanation, that every *householder* was bound to attend the leet; and that a person holding a house must be a tenant; the expression is correct:—because then tenant, householder, and inhabitant, would be synonymous. But "tenant," in a more general sense,—as applicable to all tenants, whether householders or not,—would be here improperly applied. Because that term, although applicable to court barons, where all tenants, whether resident or not, would owe suit and service, would be inapplicable to the court leet, where none but the *resiants* would owe their suit. House-
holders.

The franchise of the citizens of *Exeter* not to be sworn with foreigners is recognized; and it was said, that part of the town of *Exeter* was in the *gildable*, out of the franchise. The same is also stated of the city of *York*. Exeter.
Fol. 19.
M. T.

In an action of trespass, the prior of *Dunstable*, as lord York.
Dunstable.
1433.

* Vide ante, 8th Henry VI. fol. 1.

Hen. VI. of the town, claimed a market, and it was alleged for the
 Fol. 19. defendant, that all the *householders inhabiting* within the town
 H. T. had, time immemorial, a right to sell upon market days,
 & Fol. 25. their merchandises in their own houses, or any where else.
 House-
 holders.

In a subsequent part of the same case, it is added, that Dunstable was an ancient *borough*, and that every *burgess* who is seised of a house in the town may sell in the same house, adjoining the High-street, every market-day.

Cambridge. The mayor and bailiffs of *Cambridge* claim a fair at Steres-
 Fol. 23. bridge; and it is alleged, that the mayor and bailiffs could
 H. T. prescribe to hold a fair in the freehold of another:—but nothing is said of their being incorporated.

1435. In a case in the Exchequer, as to the priory of *St. Bartho-*
 Fol. 12 B. *lomew, of London*, it was said, that “the bailiffs had had freedoms granted by the charter of the king, and that afterwards the king made them sheriffs, and that they should plead and be impleaded by that *name*.”—which appears to be the first instance in which this peculiar corporate power is mentioned. But it will be seen, that in the cases immediately succeeding, the same doctrine is repeated, and it appears afterwards to have been gradually adopted for general practice by the court.

1439. In another case, an action of trespass was brought in the
 Fol. 16. name of the dean and canons of *Windsor*; and the following
 T. T. argument occurred on that circumstance.

“*Gilvertin*.—The name, ‘dean and canons,’ is not the name of the corporation; the name is, the ‘dean and chapter.’

“*Port*.—It seems to me that it is the name of the corporation.

“*Newton*.—Perhaps they had that name by their foundation: and so the court will intend; unless you show the contrary upon your part.

“*Ayscough*.—At Ripon, in my county, there is a college, which by its foundation, has no other name but ‘canons;’ and by that name they plead and are impleaded;—and yet that is contrary to the common law; as the dean and canons of *Windsor* are: therefore the writ would abate, by their own showing that they have brought their action by that name;

but if it were otherwise, that should come upon the part of Hen. VI.
the defendant.

“*Port.*—It appears that the writ should abate, for the name of the ‘canons,’ unless they gave their christian name; because they have each capacity to himself:—for that case is not like canons regular, who have not each capacity.

“*Fortescue.*—If your writ is not good, it shall be because they are not corporated; or because they have not capacity: and in both cases, if you will avail yourself of it, it is fit for you to show such matters upon your part.

“*Newton.*—Not if the mayor and commonalty of London shall have an action by that name, and each of them have a capacity to himself.

“*Markham.*—If you will avail yourself of this point, you should not demur for our not showing it;—but you shall say that you were used to plead, and be impleaded by that name, showing by which; and so you shall compel us to support our writ.

“*Newton.*—Contra.”

In a case of trespass by the prior of Merton against the mayor and other *burgesses* of *New Windsor*, claiming a *court leet* in the town, and that the mayor and burgesses disturbed them in holding it: Windsor.
Fol 11 B.
T. T.
1439.
Court leet.

“The defendants plead, that Windsor is an ancient borough; and that Edward I. was seised of it in his demesne, as of *fee*; and had *view of frankpledge* there of all the *inhabitants* and *residents* in the town, to be held before his bailiff, twice in the year; and the same king granted, by letters patent, to the *burgesses* and *good men* of New Windsor, the town, to hold at fee-farm for ever, paying a fee-farm rent.

“And they pray aid of the king.” And in the course of the argument (which was long), it was said, “no leet was to be held twice in the year but leets at common law; and by the common law no man shall be bound to come to two leets.

“*Markham* said, that every man by reason of his *resiancy* is bound to come to the leet within the precincts of which he resides; and there he is bound by reason of his *person*,

Hen. VI. and *not* by reason of his *lands*, so that the *resiants* are bound by reason of their *resiancy*."

And it was said, "if the prior had a leet there, it was not parcel of the borough."

"*Newton*.—If I have a leet of all the *resiants* within the precincts of my borough, which is in a hundred, those *resiants* shall not be bound to go to the *tourn of the sheriff*, which is another leet." It is however added, that "the court denied that the sheriff's tourn was a leet."

"*Ayscough*.—It seems, that *when the king grants a borough, with its appurtenances, the leet will pass, as if he had granted a borough and view of frankpledge*; and it *would not be intended by the court, but that the leet was parcel of the borough*."

"And there are many things in the leet, which are not in the tourn of the sheriff; for example, in a leet, they have cognizance of bread and beer.*"

"*Newton*.—That which is done in the leet, shall be presented in the tourn of the sheriff: and it is well proved that the tourn of the sheriff is of a higher nature than the leet; and that proves it is not a leet."

1440. Fol. 80 B. T. T. "*Paston*.—If a writ is directed to the mayor and society of the city of London; and if all the commonalty should appear, and the mayor not; they cannot plead in abatement of the writ, that they had no such *corporation*."

Corporation. Here the term "*corporation*" occurs for the second time in the text.

1440. Fol. 44 B. M. T. "In another case, a writ of *scire facias* was brought for an arrear of an annuity, recovered against the *predecessor* of a parson, by the *predecessor* of a warden of a house; and the writ shows, that the arrear was in the time of his *predecessor*. And the defendant says, that the arrears are given by the law, to the executor of the preceding warden; because the warden is in effect, as the warden of a church; in which case, the *successor* shall not have the arrears accrued in the time of his *predecessor*, but his executor.

* See 2nd Institute, 72.

Port.—He is a guardian for his brothers; and they have a *common seal* between them; in which case, the receipt of the *predecessor*, shall vest the thing in the *successor*, notwithstanding his death; because it is to the advantage of the house.

Hen. VI.
Seal.

Newton.—That case is not like the parson; because in that case, the executor of a parson shall have the arrears, in the time of his *predecessor*, and not the *successor*; because it is but a chattel in him; and the parson can make a will, but not so an abbot—dean—master of an hospital—or warden of a house—because that all the advantage should accrue to the house.”

“ Upon a writ de *nativo habendo*—the plea was, that the defendant was of *free estate*, and not a *villain*.”

1440
Fol. 32 B.
M. T.
Villain.

“ In proceedings upon the sheriff’s pannel, freeholds in the *gildable*, and the *franchises*, are spoken of, as contradistinguished from each other.”

Fol. 48,
M. T.
Gildable.

And the jurors from the *gildable*, as well as from the franchise, are also mentioned.

A writ of trespass against the commonalty of Great Yarmouth was thus—

Yarmouth.
1441.
Fol. 9,
M. T.

“ Pone Johannem B. and William C., *late bailiffs* of the town, and the *commonalty* of the town.

Yelverton.—Judgment of this writ; because the writ names them as *late bailiffs*; and not as the *bailiffs* that are now.

Fultham.—The *late bailiffs* are of the *commonalty*; in which case, they are both named in the writ.

Paston.—If a *commonalty* have done me a trespass, and afterwards two of the *commonalty* betake themselves from that *commonalty*, and reside in another town, then I shall bring my action, naming those two by name, and also against the *commonalty*; and so, perhaps, it may be those who are named the *late bailiffs*.

Newton.—No, Sir: for a *commonalty* is an *entire body*, notwithstanding 100 of them should die during my writ, nevertheless my writ shall not abate—for the same body against whom my action is maintained, continues all the

Hen. VI. time in those who are there; although when two or three
Yarmouth. depart from the commonalty, they are dead persons to that
body; and if I release one of the commonalty, it is of no
avail.

“*Fortescue*.—As to the first argument, that the writ shall abate because the bailiffs which are now, are not named; I say the writ is *primâ facie* good:—because perhaps the incorporation is by the name of ‘the commonalty’ without more; in which case, although there are bailiffs, it is fit to sue against them by the *name of the corporation*; and perhaps they are incorporated by the name of the bailiffs and commonalty; in which case, if we have badly conceived our writ in omitting the bailiffs, that shall come on your part to plead;—that is to say, that the said commonalty had pleaded and been impleaded by the name of the bailiff and commonalty from time immemorial, of which the party shall have his traverse. And as to the other argument, that they are twice named, upon which it will ensue they may be twice charged, which the law does not desire, it creates no inconvenience; because, let us suppose, that a commonalty may disseise me of my free tenement, for the benefit of the commonalty;—or that two strangers may disseise me for the benefit of the commonalty;—and I bring an action against them by their name, and against the commonalty, and they are found disseisors, then, for that corporal trespass which they have done to me, they shall lose their damages of their proper goods; and if the assise was sued against the commonalty, saying nothing of their names, there shall be no damages levied of any of them separately, but only of the goods which they have in common; and the same is in our case, because it is inconvenient that one shall be punished upon such a several trespass of his proper goods; and also as one of the commonalty, of the goods in common.”*

This case, like some which we have seen before, establishes the obscurity and uncertainty of the law of corporations at this time. It is needless therefore to repeat the observations, that have been previously made upon that point;

* Vide Mic. 41. In assise of nuisance this is adjudged, fol. 45.

but it should be remarked, it appears clearly in this case, Hen. VI. that a person departing from the town, and living in another place, separated him from the commonalty of the place which he had left; and gave him a title to his privileges in the place to which he went; consequences which have been already illustrated by many of the preceding documents.

EIGHTH YEAR BOOK.

“The prior of St. Nede brings trespass upon the case, as lord of St. Nede; and claims, that he and all his *predecessors*, lords of the same town, had had in the same town, three free mills from time immemorial, and no other had in the same town any mills except the prior and his *predecessors*; and that all the tenants of the prior in the same town, and all other *resiants*, &c. have from time immemorial had the use of grinding at the mills.” And it was said in the course of the argument (which was very long), that the suit was upon account of *resiancy*, and not upon account of *tenure*.* It was also urged in this case, that “the not keeping up of a ferry was inquirable in the tourn.”

1443.
Fol. 14,
M. T.

A claim of villainage is made, and allowed.

1444.
Villainage.
Fol. 2, M. T.
West-
minster.
Fol. 10.

Westminster is described as within the franchise of London, being in the suburbs; and London as a county of itself.

A writ of trespass is brought against the commonalty and the bailiffs of *Ipswich*.†

1453.
Ipswich.
Fol. 8 B.
M. T.

“*Moile* objected, that the writ was brought against the bailiffs and the *commonalty*, which is a *private body*; and so the action does not lie against them.

“*Wangf.*—The writ is good; for, if the commonalty and the mayor disseise me, I shall have assise against the mayor and the commonalty.

“*Moile.*—In that case, there is no other person against whom the writ can be maintained, if not against those who are the tenants there:—but in this case the law is otherwise; for, if the mayor takes my goods, claiming them for the commonalty, I shall have an action of trespass against him by the name of the mayor; the commonalty being omitted.

* Vide ante.

† Vide ante, 8 Hen. VI. fol. 1.

Hen. VI. " *Davers*.—Suppose there be a felon, and he is known to
Ipswich. the bailiff and commonalty, and they keep him, and send him to prison:—and afterwards he is acquitted, and the imprisonment tortious; he will have an action of false imprisonment against the bailiff and the commonalty.

" *Moile*.—Not so; he will have an action against the persons who took him; for I or any stranger may as well take him as the bailiff.

" *Davers*.—Suppose that the bailiffs and the commonalty are bound to me by an obligation, should I not have an action against them accordingly?

" *Moile*.—Perhaps so; but it does not appear so to me.

" *Wangf*.—This will happen if the party have not an action against them by that name; ~~that~~, if the party recovers, he will recover his damages, and will have execution for them against their own proper goods, if they did that in right of the commonalty.

" *Moile*.—That would not be so considered by me; for, in such form as he uses his writ, in such form he will have execution.

" *Ashton*.—The bailiffs can as well inherit goods as lands, according to their custom, or other similar things, of which, if they be taken, they have their action; and an action in the same manner can be brought against them.

" *Moile*.—You say right; the special matter should be rehearsed.

" *Wangf*.—If the bailiffs command me to contend with a man, or to take his goods, &c. he will have an action against the bailiff and the commonalty.

" *Moile*.—Not so; for there he is as a private person among them; for suppose that the mayor and the commonalty disseised me to the use of a stranger; if I bring my action against the mayor and the commonalty, and the third is not named, my writ will abate.

" *Davers*.—If a man brings writ of trespass against me for a trespass done to him, his action is maintainable; because he is personable, and against whom an action can be maintained. As to a town or city, which is corporate of bailiffs

and commonalty, they are by this name a person corporate Hen. VI. and an entire body:—thus an action lies as well against them Ipswich. as against me.

“*Ashton*.—If so, it is granted them ‘implacitare et implacitari’ by a name.

“*Laicon*.—If the bailiffs and commonalty hold of me by certain services; and I distrain them; and the mayor rescues them; I shall have writ of rescous against the commonalty and the mayor:—or if I have delivered to the mayor and commonalty certain goods safely to keep, I have an action against them by their name.

“*Wangf*.—Suppose the mayor and the commonalty claim as in severalty, I shall have action of trespass against them by their name.

“*Moile*.—Not so; but in such case you will have it, if the mayor and commonalty be seised of an acre by which they have been accustomed to cleanse a running stream through my land, if by default my land be overflowed, I shall have against them an action by their name; because there are no others against whom my writ could be framed, for it belongs to them, and to no others. And as to the case which has been put of detinue, the action is not maintainable against them by the name, if not by deed indented, which would conclude them. And as to the other case which has been put, of forging false deeds, he will not have an action in that manner; for, as his title and claim should be to their disinherittance, yet this is not cause of action. And, in my opinion, this action in its form is not maintainable; for, if I enfeof the mayor and the commonalty of certain land, peradventure the commoners are but six, to them and their heirs, by their names, and they are disseised, they will have assise in their names; the name of the mayor and the commonalty being omitted:—because this is their own inheritance, for the survivor shall have the land. But otherwise it would be, if the feoffment was made to the mayor and the commonalty, and to their *successors*. So here concerning the parties who are bailiffs, they claim the goods by their custom, counting

Hen. VI. that the action should be brought against them, rehearsing the special matter; but this action is only general.

“*Wangf.*—This goes to our action, say what you will.

“*Moile.*—This goes to our writ; and if my master thinks the writ good, we are ready to answer.

“*Ashton.*—Concerning the writ, answer, &c.”

1454.
Fol. 29,
M. T.

Tourn.

In a writ of trespass for a horse taken, it was stated, “that the place where the trespass was alleged was within the hundred of Dacorum, in the county of Hertford; and that the king has always had a *tourn* within the hundred of Dacorum, before the sheriff of the county for the time being, in a place called S., twice yearly; and that the king has always been seised of suit at the same tourn for the township of D. within the same tourn, by four men, and the reeve of the same town annually to be made, who have always presented all manner of trespasses and defaults, there presentable in the town of D., and if they made default they have been amerced. And the king has been used to distrain for such amercement every man *residing* within the town. And at the tourn of S., held before the sheriff, the four men, and the reeve of the town of D. made default, by which the vill was amerced by the court. That the defendant was the bailiff of the king, and collector of fines and amercements. That the plaintiff was *conversant* within the town of D.; and that the defendant, as bailiff and collector, had seized the horse, for which he prayed aid of the king, &c. &c.”

1456.
Villainage.
Fol. 12,
M. T.

In a case where a person claimed to be of *free estate*, it was decided, that the question of his *villainage* should be determined in the place where he *resided*, and not where the writ was brought.

Fol. 17 B,
M. T.
Predecessors.

In a writ of debt against a prior and his convent, the plaintiff declared, upon an obligation made by the *predecessor* of the prior; and it was said, that the plaintiff could not maintain his action upon this obligation, for that the prior, the *predecessor* of the defendant, took with him six canons of the same place, and went to a place in another

county, which six made a convent, and carried with them Hen. VI.
their common *seal*, and then the prior released the convent Seal.
from the obligation to the plaintiff:—it was urged that this
was not a plea; for it cannot be understood that one of a
convent could make an obligation or release, any more than
a *commonalty*, for they are *incorporate*, and thus it is no plea.

In a case respecting customs, and the prerogative of the London,
king, it was said, that it had been the custom of London, Fol. 25 B,
that if a *villain* remained peaceable in London for a year, M. T.
he thereby became enfranchised; but that this custom was Villain.
held void, because it was in opposition to reason, and in
prejudice of others; for a villain is inheritable, and this
custom was against common right, and in prejudice to the
property of others; and therefore it would not avail.

This is a strange determination, as the custom alleged in
London was, in fact, the law of the land, as we have fre-
quently shown before in our extracts from Glanville, Fleta,
Britton, and the Mirror; and the same custom in London
was alleged in the beginning of this reign.* The only ground
upon which it could be denied was, that it was pleaded as a
local and not as a general custom.

In a case of this date, upon its being stated that a devise 1458.
was made to the *men of the parish*, it was denied that such Fol. 30,
a devise could be good, because they were not *corporal*. T. T.
From which, and the discussion which follows, it again
appears, that the doctrine of corporations was at that time
in its infancy.

In a præcipe in capite of lands in *Stanteff*, it was said, 1458.
that the town of S. was an ancient *borough* of the king— Stanteff.
had bailiffs, and had been pleaded by the name of the bailiffs Fol. 26 B,
from time immemorial. That all their lands and tenements T. T.
within the town, had, from time immemorial, been pleadable Borough.
by writ of right patent; and that they had been accustomed
to make their protestations, and to sue there by such writ
as they wished, excepting assise of mort d'ancestor; and
that the lands and tenements within the town were held
of the king each severally, for 3*d.* yearly in *burgage*. In Burgage.

* See before, 7th Hen. VI. fol. 31 B.

Hen. VI. the course of the case it was said, that the king could not make a grant of ancient demesne at this day; nor a man prescribe for lands devisable. One of the counsel said, that London was ancient demesne; for the citizens prescribe that a villain should not be taken out or escape by *capias*.* To which it was answered, that London was not in Domesday Book; nor was it called ancient demesne formerly. It was stated, that the reason of ancient demesne was, because it was in the hands of the king; and the king, by his prerogative, permitted his tenants to plead and be impleaded by a certain form; and so the prescription arose. But no other person could do this against the king, because it would be to his prejudice.

1459.
Fol. 16,
M. T.

Predecessors.
Frankpledge.

Leet.

An action of trespass upon the case was brought by the abbot of Ramsey against the prior of S., stating, that the abbey was seised of the hundred of C., in the same county, in which is the hundred of the town of S.; within which hundred and town, the abbot, and all his *predecessors*, have had *view of frankpledge*, with all things belonging to the same, and all fines, amercements, and other profits, as of his church of Ramsey; which view has been held from time immemorial, yearly, at Easter, by his steward; and that the defendant had disturbed the steward in the execution of his duty. The defendant states by protestation that the plaintiff has no such leet, and that the defendant is lord of the town of S., and that his *predecessors* have had a leet in the town of S. from time immemorial, and have held it at the feast of Michaelmas, with all amercements; but for plea the defendant says, that the plaintiff and his predecessors have had a leet within the town, to be held at Easter, from time immemorial; but that the plaintiff and his predecessors, or their bailiff of the hundred of C., have been accustomed to warn the prior and his predecessors, or their bailiffs, 40 days before the leet; and the defendant and their predecessors have been accustomed to superintend the leet with the steward of the plaintiff, if they desired it; and that the defendant has had all fines and amercements in the said

* See before, 7th Hen. VI. fol. 31 B; and 35 Hen. VI. M. T. fol. 5 B.

leet of their servants and tenants, and of all fines of bakers and brewers; and that the bailiff, by force of the estreats, has been accustomed to collect the fines and amercements; and all this is matter of prescription. Hen. VI.

And the question was adjourned.

In an appeal of robbery sued in the King's Bench, the plaintiff was non-suited before the declaration. And *Nottingham* prayed that the defendant should be arraigned at the suit of the king, upon an indictment of the same felony, which was taken before the sheriff in his *tourn*; and it was brought by certiorari; and then the appeal was taken and the indictment was read; but the *tourn* was held after the month of Michaelmas; and the defendant objected that this *tourn* was void by the statute, and consequently the indictment. And they prayed that it be dismissed; and the statute was read. From which it appeared, that the sheriffs should hold their *tourn* twice a year, that is to say, once in the month after the feast of St. Michael, and the other within the month after the feast of Easter, and if they were held in any other manner, then they should lose their *tourns* for that time. But it was urged, that although the sheriffs should lose their profits, yet the indictment is good for the king; for this man was legally indicted, and this is the matter for debate. By the advice of all the justices, it was agreed that he should go without arraignment; because they had no matter before them, upon which they could arraign him. And the indictment was clearly void, and *coram non iudice*:—for the statute says that he shall lose his *tourn* for this time, and then he cannot have his *tourn*, and consequently all is void. And it was said by the justices, that if a man had a *leet*, which has been held upon a day certain, and he wishes to change the day, and fix it upon another, it will be void and without warrant: but otherwise if it is his court baron. 1459.
Fol. 7.
M. T.

Tourn.

It was said in a case of an annuity, brought by the dean and chapter of Stoke against the master of the hospital of St. Mary Oveis, that a chapter can have neither *predecessor* nor *successor*: for that the chapter is an entire body, which remains always an entire chapter, and cannot either have 1460.
Fol. 13.
M. T.

Predecessor.
Successor.

Hen. VI. predecessor or successor, because that the chapter is perpetual.

The predecessors of deans and chapters have been frequently mentioned before in the Year Books, and therefore this appears to be a new principle adopted with respect to them:—and is another confirmation of the assertion, that the doctrine of Corporations was only in its infancy at this period, which is the general conclusion to be drawn from the cases we have quoted in this reign.

SCOTLAND.

We have but few documents at this period relative to other parts of the kingdom. As to Scotland, it appears that the lesser barons were in this year exempted by a statute from personal attendance in Parliament, and were permitted to elect representatives. The exemption was eagerly adopted; but the privilege so little valued, that except upon one or two instances, it was neglected during 160 years: and James VI. first obliged them to send representatives regularly to Parliament.*

In the same year a law was passed, which provided that out of the commissioners of all the shires should be chosen a wise and expert man, called the common speaker of the Parliament, who should propose all causes, pertaining to the Commons, in the Parliament or general council. But no such speaker, it would seem, was ever chosen; and by a subsequent law, the chancellor was declared perpetual president of Parliament.†

IRELAND.

Dublin. With respect to Ireland, *Dublin* received a charter of confirmation of former privileges.

Athboy. And in the fourth year of this reign, the king granted to 1425. the provost and commons of *Athboy* and their successors, confirmation of the charter which had been given to them

* Robertson's Scotland, vol. i. p. 90; *Essays on British Ant.*; Dalrymple's *Hist. Feudal Property*.

† Robertson's Scotland, vol. ii. p. 90.

by Henry IV. And likewise granted to the provost, burgesses, and commons, all customs and talliages of foreign merchants, for 60 years then next ensuing, towards the murage of the town, &c. That no one who was a *resident*, or for the time being should be *resident, conversant, dwelling, or keeping a house* within the town, should be prosecuted for selling or buying by the weight, which was called auncell or poundrell. That the customs and talliages paid by the strange merchants should be expended by the provost of the town for the time being, and that the burgesses should render an account before the lord and provosts of the town, and before two burgesses of the town, to be named by themselves. The charter then concludes with several provisions respecting toll, but which are unimportant to our researches.

Hen. VI.

Athboy.

Residents.

WALES.

As to Wales, our documents are also few:—

In the first year of this reign, the king, inspecting letters patent of Henry V., when he was Prince of Wales, which recited by inspeximus a charter of Richard II., inspecting a charter of Edward the Black Prince to the towns of Nevynn and Pwllhelly;* confirmed them to the men and burgesses of Pwllhelly.

Pwllhelly.
1422.

The jealousy as to the acquisition of any privileges in England is marked as continuing at this time by the following extract from the Parliament Rolls.

Parliament
Rolls.

Owen Fitz Meredith, a Welshman, is made a denizen, and enabled to purchase lands in England; but not to be a citizen or burgess, nor officer or minister of the king in any city, borough or town mercatorial whatsoever.

1432.

Isabella, Countess of Worcester, in the first year of Henry VI. granted to the burgesses of *Cardiff*, their heirs, and successors, some additional privileges beyond those which they had previously enjoyed, distinguishing the burgesses from strangers:—and the fair inference from the charter seems to be, that it was intended to give these privileges to all the *inhabitants* of the place.

Cardiff.
1422.

* Vide ante Temp. Edw. III.

Hen. VI.

Cardiff.
1450.

A charter of Richard Nevill, Earl of Warwick, appears to speak still more decisively upon this point. After reciting that the *burgesses* of Cardiff continually had towards him and his ancestors, given proof and demonstration of their fidelity and love, by fortifying, walling and repairing the town in the walls, towers, gates and ditches, which otherwise would have been done very slowly without their great labour, costs and expences, from whence they had incurred heavy indignation and hatred from those who *dwelt without* the town:—and wishing to reward them suitably in consequence thereof, granted to the *burgesses* and *inhabitants* of the town and liberty of Cardiff, their heirs and successors, that no one of them should be impleaded, disquieted, or aggrieved for any felony, trespasses, agreements or contracts done without the town, and the liberties of the same, elsewhere than before the constable and bailiffs of the town, for the time being: or in the absence of the aforesaid constable, before the said bailiffs, unless it should be that the burgesses or inhabitants should have been taken without the liberty for felony, with the mainour; and that the constable and bailiffs, or in the absence of the constable, the bailiffs for the time being, should have full cognizance of all kind of pleas, as well of felonies, trespasses, debts, agreements and contracts as of freehold and other actions, complaints and rents whatsoever done and arising within the town and liberties; and that all such pleas, actions, complaints and demands should be tried and remedied by the constable and bailiffs, or in the absence of the constable, by the bailiffs, and not elsewhere.

And the charter further granted to the burgesses, *resiants, and their successors*, that if any person should be willing to come to the town and liberty, he should in nowise be drawn away or removed from thence for any trespass, debt, accompt, agreement or any other contract whatsoever; but that if any one wished to proceed against him in the premises, or sue him before the constable and bailiffs of the town for the time being, they should there have immediate justice done them, and not elsewhere.

The charter having mentioned in the recital, the loyalty and

good conduct of the burgesses, and their having incurred the hatred of those living in foreign parts, granted amongst the privileges enumerated, "that if any person should be willing to come to the town to stay and *reside* there, they should enjoy the important privilege of being subject only to the local jurisdiction." Hen. VI.
Residence.

The term *resiant* used in this charter is the appropriate term for the suitors at the *court leet*, who are all the *inhabitants* of the place; and none could be exempted from that suit. Leet.

The clause also lastly referred to, recognizes in the most unqualified way, the unlimited right which any person had of coming to *reside* at the place, and as a consequence to enjoy the privileges of it. Residence.

Considering the whole context of this charter, it seems hardly possible for stronger language to be used to show that all the *inhabitants* were intended to be participators in the privileges of Cardiff. Inhabitants

And the king himself, reciting in a charter, by way of *in speximus*, all the former royal charters, confirms them to Richard Nevill, Earl of Warwick, and Ann his wife, and the heirs of her body, and also to whatsoever burgesses, men and tenants, *resiants* in the towns of Cardiff, Cowbridge, Neath, and Kenfig.

This royal charter must receive the same construction as that of the Earl of Warwick. And therefore it seems clear, that the *burgesses* of Cardiff were at this time properly the *inhabitants*, *resiant householders*, *paying scot and lot*:—according to the ancient laws of England.

CONCLUSION.

We have now closed this long and important reign; in which we have distinctly traced, by documents that cannot deceive us, the *first introduction of municipal corporations into England*.

This conclusion does not rest alone upon the actual grant of a charter in that form to Hull, only a few years after a previous grant not incorporating it—neither upon the fact, of the grant to the united decenna, vill, and hamlet, which for

Hen. VI. the first time constituted the incorporated borough of Plymouth—but it is the irresistible result from the interpolation of the word “corporation” in the margin of the Year Books and in the title of the statutes—from the gradual development of the doctrine of incorporations, as traced progressively in the acts of Parliament—and from the successive arguments and decisions in the courts of law, as reported in the Year Books. The concordance of all these facts—further illustrated by the continuance of the doctrine of *villainage*, preserving the distinction between *freemen* and *villains*—the full practice of the sheriff’s tourn and court leet—and the usages at that time as to the swearing and admission of freemen—all tend to show, that the principles of the Saxon and common law were then in full effect, and constantly acted upon: and that the swearing and enrolling of the resiant householders in the borough was founded upon those principles—although, for the purposes of perpetual succession, of suing and holding under a common name, the doctrine of corporations was superinduced upon that system. And, therefore, upon the coincidence of all these facts—reasons—and principles—we rely with perfect confidence for the position, *that this was the æra in which municipal corporations were first established in England.*

EDWARD IV.

We have now passed the period in the history of our constitution, in which *municipal bodies were first incorporated*. However, a few places only received at this time charters of that description.

The remainder of our inquiry will chiefly consist in tracing the successive grants by which these incorporations were spread over the country; and marking the progress of those usurpations and abuses which sprang out of the introduction of this new system—the departure from the sim-

plicity of the common law—and the misapplication of Edw. IV. the ancient principles and forms to the newly adopted doctrines.

This will necessarily lead us also to an investigation of the occasions, in their chronological order, upon which the courts of law and the parliamentary tribunals, from time to time, sanctioned and supported these innovations.

In this and the succeeding reigns, we shall adopt the same division we have before pursued, and give successively, the Statutes—the Charters—the Parliament Rolls—the miscellaneous documents—and the Year Books—adding also the Scotch, Irish, and Welsh records.

STATUTES.

The statutes of this reign commence with a declaration of what acts, done by Henry IV., V., and VI., should continue good; and what should be annulled. The recital of this statute states, that to avoid doubts and diversities of opinions, which might arise upon judicial acts done in the time of Henry IV., Henry V., and Henry VI., formerly in fact, though not in right, successively kings of England—it was enacted, that all fines, and all judicial acts, should be of as full effect as if made in the time of any king lawfully reigning.

1461.
Cap. 1.

It also provides the same, as to all creations of nobility and the like; and then adds, that the heavy charges and costs which the cities, boroughs, towns, and the five ports of this kingdom had sustained, and the great poverty amongst those people, and considering their ease and relief, it was enacted, that all manner of liberties, privileges, franchises, powers, jurisdictions, profits, immunities, *corporations*, fortifications, enlargements, annexations, unions, *severances from counties*, and *making of counties by themselves*, &c., not revoked, repealed, or annulled by authority of Parliament, or otherwise by process of law, granted in the days of Henry IV., Henry V., or Henry VI., kings of England,

Edw. IV. to any mayor, bailiffs, sheriffs; mayor and sheriff; sheriff and bailiff; mayor and bailiffs; commonalty; citizens, mayor, and commonalty; mayor, commonalty, and citizens; mayor and citizens; mayor and aldermen, and their successors; mayor and citizens, their *heirs* and successors; mayor and commonalty, their *heirs* and successors; citizens and their *heirs*; citizens, their *heirs* and successors; bailiffs and citizens, their *heirs* and successors; mayor and aldermen; mayor, aldermen, and burgesses; mayor and burgesses; mayor, alderman, and sheriff, or under-sheriff; mayor, burgesses, and their successors; mayor, burgesses, their *heirs* and successors; mayor, sheriffs, and burgesses; mayor, bailiffs, and commonalty; aldermen and commonalty; alderman, bailiffs, and commonalty; alderman and bailiffs, their *heirs* and successors; bailiffs and commonalty; bailiffs and burgesses; citizens, burgesses, and commonalty; mayor, bailiffs, and burgesses, their *heirs* and successors; *good men*, their *heirs* and successors; portreeves, bailiffs, and commons; stewards, burgesses, and *good men*; portreeves, barons, and *men*; mayors, barons, and commonalty; mayor and barons; barons and commonalty; barons; jurats; barons and jurats; *men inhabiting*, mayor, constable, and company of merchants, of the staple at Calais; and to each of them; and to the *heirs* and successors of each of them; and of the masters, brothers, and sisters of guilds and fraternities; masters, and commonalty, their *heirs* and successors; and wardens, and masters of arts; wardens of the commonalty of the mystery of mercers of the city of London; or to any two before named, and the successors of either of them, having *corporation*—by whatsoever name or names those, or any two of them, might be called or named in any of the said grants—should be in like force and virtue as if they were granted by kings legally reigning in this kingdom; and in like form, to have confirmation in the chancery, of the said liberties, privileges, franchises, *corporations*, and other premises, as if their grants were made in the days of Edward III. and Richard II., formerly legal kings of England.

Other provisions for the same object follow ; but not being immediately connected with the subject of our present inquiry, it is unnecessary to insert them ; excepting that grants in *mortmain* are referred to ; and there is a confirmation of all grants of privileges and releases of fee-farms, &c., to all mayors, bailiffs, and commonalties ; and all ordinances made in Parliament for the conservation of the town of *Shrewsbury*, and the good government of the *inhabitants* there.

Edw. IV.

Mortmain.

Shrewsbury.

This statute exhibits a proof of the doubts and uncertainties which arise from a disputed succession to the throne ; and throws considerable suspicion upon the grants which had been made by the preceding king, during the struggles between the contending houses of York and Lancaster.

It seems, however, sufficiently to establish, that whatever question might be left as to other acts, the doctrine of corporations was irrevocably adopted ; for grants of that description are expressly referred to, and confirmed. And the variety of names which had been used by the aggregate bodies of different towns, are specified in the statute with a particularity which can alone be explained by the cases relative to misnomers, to which we have referred in the Year Books of the two or three preceding reigns.

It should, however, be observed, that even in these names, the mention of "*heirs*," upon which we have so frequently observed, often occurs ; and the different appellations seem still to retain traces of the gradual development of the doctrine of incorporation and succession.

From this time, however, we shall find, contrary to the former practice, the terms of *incorporation* frequently introduced into the statutes, charters, and legal records.

But to proceed with our extracts:—

The second chapter of the statutes of Edward IV., enables the justices of the peace to award process upon indictments taken in the sheriff's *tourn* on *law-days*.

Cap. 2.

Justices.

Tourn.
Law-days.

From which it may be inferred, that those courts were in full exercise at that time—but abuses appearing to have arisen in the administration of the law before those tribu-

Edw. IV. nals—it was ordained, that no fine or amerciamment upon any indictment taken before them should be levied by those officers; but that the indictment should be delivered to the justices of the peace at their next sessions; where process should be awarded upon them as if they had been taken before the justices of the peace in the county: with a proviso, that the statute should not be prejudicial to the sheriffs of London; nor to any persons having grants of fines and amercements.

1463.
Cap. 4.
Inhabitants.
Householders.
Sec. 4.
St. Martin-le-Grand.

The fourth chapter in the 3rd year, relative to the inconveniencies arising from ready-wrought wares being brought into the kingdom, recites that many artificers, *inhabitant* and *resident* within the city of London, and other cities, boroughs, towns, and villages, were greatly impoverished by the above means; and by sales made by strangers, being the king's enemies, as well as by merchant strangers and denizens; whereby many of the artificers, as well *householders* as hirelings, and other servants and apprentices, were reduced to great poverty; provides a remedy against these evils, and prohibits such sales for the future. The fourth section of that act states, that the masters and wardens of the crafts and mysteries in every city, borough, town, and village, where they were used, and the mayor, bailiff, constable, serjeant, or other officer, of such city, borough, town, and village, should have power to search at all times, at fairs and markets for such wares; and that those which were not lawful should be forfeited:—Provided that they should not enter into any place exempt by privilege, franchise, or custom, to make any search, but by the oversight of some officer of the place. And that nothing in the act should be prejudicial to the dean of the free chapel of St. Martin-le-Grand, nor his successors, nor to any persons *dwelling* or *inhabiting* within the sanctuary or precinct of the chapel.

Residence.
Householders.

From this statute it is evident, that the rights and liabilities of the several persons described therein, depended upon their local *residence*. *Householders*, hirelings, servants, and apprentices, are mentioned in it, as well as places exempt by

privilege, franchise, or custom. And it is evident, that the privileges of St. Martin-le-Grand were only to be enjoyed by those *dwelling or inhabiting* within the precinct. Edw. IV.

Similar provisions with respect to wool are made in the first chapter of the 4th of Edward IV. 1464.
Cap. 1.

In the eighth chapter of the same year, the *hosts* and guides of *strangers* residing in London are mentioned. Cap. 8.
Hosts.

In the second chapter of the 7th year of this king, relative to the Devonshire cloths, the terms “inhabitants” and “residents” are used together and separately, apparently as synonymous, and importing actual “inhabitancy.” 1467.
Cap. 2.

The second chapter of the 8th year, prohibiting under penalties the taking or giving of liveries, or retaining any except as menial servants; speaks of persons “inhabiting” within the jurisdiction of the court; to whom alone the jurisdiction seems to have been limited. At the close of the statute there are exceptions as to liveries given at the coronation of the king or queen; at the installation of the archbishop or bishop; in the creation or marriage of any lord or lady of estate; or the creation of knights of the bath; or at the commencement of any clerk in any university; or the creation of any serjeants-at-law; or given by any guild, fraternity, or mystery, *incorporated*; or by the mayor or sheriffs of London; or any mayor, sheriff, or other chief officer, of any city, borough, town, or port of the realm. 1468.
Cap. 2.
Liveries.
Inhabiting.

Upon this exception in favour of the guilds, fraternities, and mysteries, were no doubt founded the liverymen of the several companies in London: as well as the gowns and liveries worn by the officers in the several boroughs in England. London.

The eighth chapter of the 12th year of this reign recites, that the governors—that is to say, the mayors, bailiffs, and other like governors—of every city, borough, and town of substance, for the most part have *courts leet*, and *views of frankpledge*; the surveying of all victuallers there; with the correction and punishment of offenders and breakers of the assise:—but as many persons had procured letters 1472.
Cap. 8.
Court leet.

Edw. IV. patent of the king to be surveyors and correctors of victuallers, &c. : and by such pretences commit divers extortions upon the king's people ; it was therefore enacted, that all such letters patent should be void.

1477. In the 17th of Edward IV., in the act relative to the exclusion of Irish money, in the enumeration of the several places in which the jurisdiction is to be exercised, the justices of the peace, the mayors, sheriffs, bailiffs, and other chief governors of cities, boroughs, and "*towns corporate*," are mentioned :—from the adoption of which latter term—not to be found in the statutes of the preceding reigns—it seems that it had at this period come into common use, being inserted in the first act of this reign, as well as in this statute.

Berwick. An act for the town of *Berwick*, " speaks of the burgesses and the men enfranchised of the town of Berwick," and grants them the fishing there at farm.

CHARTERS.

In the reign of Henry VI., we have only found ten incorporations :—Hull—Plymouth—Ipswich—Southampton—Coventry—Northampton—Woodstock—Canterbury—Nottingham and Tenterden.

We have however traced in the statutes the adoption of corporate terms ; and we proceed now to point out the contrast, which this reign will afford to all the preceding, by the number of grants of incorporations which it exhibits :—Charters of that description becoming frequent in this period ; and many places receiving corporate power in addition to their ancient privileges ; but it will be seen, that in the intervals between the charters of incorporation, others frequently occurred which were not of that description.

LONDON.

Having extracted the few statutes which are material in this reign, we proceed to the documents relative to the city of *London*. We find from the inspeximus in the charter of 1462. Charles II., that in the second year of Edward IV., an ample

charter was granted by the king, conferring many privileges upon this city; some of which it will be seen are given with reference to the change which had at this time taken place in the law. Edw. IV.

The statute of the first of Edward IV. having taken from the *tourns*, or *law-days*, the trial of indictments and presentments found there, and transferred it to the justices in quarter sessions, the city of London was specially excepted from the operation of that statute. And in consequence, we find that the charter to which we are referring, begins with a recital, that such things as ought to be determined by conservators of the peace in the *counties* of England, have been used to be executed in the *city* of London—evidently treating the city of London as a *county*.

The charter afterwards providing for the conservation of the peace in the city, directs that the mayor and recorder, and the aldermen who have been mayors, should be conservators of the peace, and justices, to determine all felonies, Justices of the peace. &c. That the citizens should be attendant to them in all things pertaining to their offices as conservators of the peace; and that the citizens might record their customs by word of mouth before any justices by their recorder. There is also a special provision, that all merchants, as well deni- Merchants zens as aliens, *abiding* within the city, and merchandising there, (though they be not of the liberty of the same city,) should be partakers, taxed, and contributors, according to their faculties, in subsidies, talliages, grants, and other contributions whatsoever, for the need of the king, or of the city.

The charter further states, that, as it is well known and manifest, that *those of the city* which are called, elected, and taken to the degree of aldermen, as proper, by their condition Aldermen. and merits, to execute those offices, have sustained great charges during the time they make their *abode* and *residence* Residing. in the city; being vigilant for the good, and government, of the same:—and for that cause oftentimes leave their possessions and places in the adjoining counties:—In order that they may, without fear of inquietness or molestation, peace-

Edw. IV. ably abide and tarry in such their country houses, places and possessions, when they shall return there for recreation, the king granted to them, that they should not be put in any assises, juries, &c. or made collectors of any taxes.

The charter then recites the grant of Edward III. of the town of *Southwark*, and confirms it; with waifs, estrays, treasure-trove, all estreats and goods of felons, and assise of bread and beer, with the correction and punishment of all *inhabiting* and exercising any arts; with all fines and amerciaments, and the return of writs:—excluding the king's officers; and granting a fair; with a court of pie powder. And also a view of frankpledge, and whatsoever thereto belonged.

From this charter it should be observed, that all the former privileges of London are in truth confirmed; together with those special provisions which were made necessary by the statute of Edward IV.; and the merchants *abiding* within the city are in effect directed to pay *scot and lot*, although they are not of the liberty—that is, although they are not permanent inhabitants within the liberty of the city; according to the application of that term so frequently remarked in the progress of our inquiry.

The privileges of the *aldermen* are also made to depend upon the fact of their *residence* within the city; and are granted upon the reasonable ground of the expences they incur, and the duties they perform there.

In the confirmation of the grant of the borough of *Southwark*, especial mention is made of the *view of frankpledge*, and whatsoever belongeth to it. And in the printed copy of the charters, it is stated in a note upon this clause—founded upon the common law—that it was “a pledge or surety for freemen of fourteen years of age and upwards—religious persons, clerks, knights, and their eldest sons excepted. The freemen were to find security towards the king, or else to be kept in prison. This custom was so strictly preserved, that the sheriffs even took the oaths of persons under 14 years of age.” *

* Luffman, Charters of London, p. 131.

From the Year Books of this period it appears,* that disputes arose between the city of London and the abbot of Westminster respecting their several jurisdictions; and in other cases, in the same reports, at this time, the *hustings of London*—and the privileges of the city—are repeatedly mentioned. But no reference is made to its being *incorporated*; notwithstanding we have seen that several other places had at this time been made corporate; and the terms were in general use.

Edw. IV.

Year Books

Hustings.

Not incorporated.

In the 3rd year of this reign, the king granted another charter to London, giving to the mayor, commonalty, and citizens, the tronage, weighing, and measuring of wool, brought to the staple of *Westminster*—and directed that it should be made in Leadenhall, within the city, and in no other place within three miles of the city; together with all fees, profits, &c.

1463.

Westminster.

In the 6th year of this reign, there is, among the Hargrave Manuscripts,† a recognizance upon the admission of a freeman in London—the condition of which is, that if the said A. B., as long as he shall enjoy, or claim to enjoy, the liberty of the said city, shall be continually *abiding with his household* within the said city, or the suburbs of the same; and if he be, according to his degree, in *lot and scot*, supporter and maintainer of all the charges of the city, with the concitizens of the same; and also if he specially and principally occupy the craft or mystery of L—, to the which he is admitted, more than any other craft, if any within the said city he will occupy; or it shall happen to him to occupy;—then the recognizance to be had for nought; or else to stand in full strength and virtue.

Householders.
Lot and Scot.

It will be remembered, how entirely this recognizance corresponds with the description of a citizen before extracted from the Year Book.‡

In the 9th year of Edward IV., one Peter Pekham, a resiant in the ward of the Tower of London, having behaved contemptuously to the alderman of that ward, and having

1469.

* Year Book, 2 Edw. IV. fol. 23.

† Hargrave MSS. 135—226.

‡ See before, pp. 634 and 699.

Edw. IV. torn up his admission as a freeman, in the presence of the mayor, was desirous of surrendering his freedom. But the mayor, in a return to a writ of certiorari, states that he refused altogether to receive the surrender, because, if such surrenders could be made at the will of the delinquents, they could never be punished:—*nor would there be persons to take upon themselves to sustain the burdens or duties of the city for the honour of the king, or the good, or government of the city.*

And on the return a procedendo was ordered; from which record we find the first instance of the refusal of a surrender, founded upon the first principles of our law, that no man is at liberty, without the consent of the mayor, or king's officer, to withdraw himself from the performance of all public duties and offices; and we may also directly infer, from this document, as established by all our former quotations, *that the being an admitted freeman was both a right and a duty, to which every inhabitant householder was as well entitled as bound.*

1472. In the 12th and 15th years of this reign, orders were also
1475. made by the common council of London, enforcing the con-
Residence tinual residence of the freemen, and calling upon those who
resided out of the city to come with their families and dwell
within it.

1478. In the 18th year of this reign, two charters were granted
to London upon the same day; one giving to the mayor,
commonalty, and citizens, licence to purchase lands, &c.,
Mortmain. notwithstanding the Statute of Mortmain—although no writ
of ad quod damnum had issued. The other granting to the
mayor and commonalty the office of package, scavage,
Coroner. carriage, portage, and also the office of coroner—with a
non-intromittant clause as to other coroners of the king.

It should be observed, that sometimes these grants are to the "mayor, citizens, and commonalty;" at other times, "the citizens" are omitted, and again subsequently introduced—so that it is obvious, from this instance, as well as from many others to which we have referred, and also from the variety of names repeated in the statute at the commencement of this

reign, that notwithstanding the change of these appellations, ^{Edw. IV.} they were in substance the same; and that the *citizens of London at that time had no fixed corporate name.*

But this king also, in the 22nd year of his reign, although ^{1482.} the citizens of London were not incorporated, expressly granted that privilege to the mystery of the cooks within ^{Cooks.} the city, by letters patent *incorporating* the freemen of that mystery.* He commences the grant by reciting, that the freemen of the mystery of cooks of the city of London, when personally attending upon his business, had been summoned and impannelled upon assises and juries, and other inquests within the city; and, by reason of their non-attendance, they had sustained many hardships and losses, in great issues and amercements; and at the supplication of the said freemen, the king granted to them, that all the men of the same mystery of the city, should be, in substance and name, *one body and one commonalty perpetual.* And that two principals of the same ^{A perpetual body.} commonalty, by the unanimous assent of 12 or eight of that commonalty, might yearly elect out of their body two masters, to direct and govern the mystery and commonalty. And that the masters, or governors, and commonalty, might have perpetual succession, and a common seal. ^{Seal.} And that they, and their successors for ever, should be persons fit and capable to purchase and possess, in fee and perpetuity, ^{Hold lands.} lands, tenements, and other possessions. And that they, by the name of masters, or governors, and commonalty, might implead and be impleaded. ^{Plead.} And that they might lawfully have honest assemblies of themselves, and make statutes and ordinances for their wholesome government. ^{Bye-laws.} Powers are then given, that they may admit and receive to have and enjoy the liberties of the city, according to the custom, fit and sufficient persons, skilled and informed in the mystery of cooks.

* Plow. 521, in Croft v. Howell.

Edw. IV.

OXFORD UNIVERSITY AND CITY.

1461. A charter of the first year of Edward IV., confirms by inspeximus all the former charters granted to the university, and also recites and confirms the last charter of Richard II. And stating that the king had been informed, by the chancellor and scholars of the university, that the precincts of the *town* (not the precinct of the *university*, as in the charter of Richard II., and in the granting part of this charter) were not limited by any certain metes and bounds; and that many of their liberties were granted by general words, by which they were less able to enjoy them—the king, at the instance of George, Bishop of Exeter, chancellor of the
- Bounds. *university*, granted that *its* bounds should, on the east part of the town, extend as far as the Hospital of St. Bartholomew, near Oxford—and on the west part, as far as the vill of Bottley—and on the north part of the town, to the gate called Godstow Brigge—and on the south part of the town, to a certain wood called Bagly—which ever afterwards should be called the precincts of the *university*.

The charter then gives the most general jurisdiction over all matters, and all the articles of justices itinerant, notwithstanding they should even affect the king, (pleas of felony and mayhem, and free tenement only excepted). It prohibits the interference of all justices and judges, stewards, marshals, clerks of the hundred, sheriffs, mayor, bailiffs, or other officers or ministers.

Non-intromit.

And further grants, that if the chancellor, vice-chancellor, or any master, scholar, officer, or minister of the university, or any person under the privilege of the university, should be indicted before any justices of the King's Bench, judges of gaol delivery, justices of the peace, or sheriffs, &c., or the mayor or bailiffs of the town, by any of the laity, and should be therefore imprisoned; and if the chancellor or vice-chancellor, should wish to claim him; the person in whose custody he is, should, by commission under the great seal, deliver him to the steward of the chancellor or vice-chancellor, before whom and a jury, half of whom should be taken

from 18 persons impannelled by the sheriff of Oxford from Edw. IV. the neighbourhood where the offence was committed, and half from 18 others impannelled by the bedells of the university, from laymen under the privilege and jurisdiction of the university, and that the matter should be tried according to the custom of the land, and the privileges of the university. And if the accused should allege that he was a clerk, or any thing else, by means of which he ought to enjoy the privilege of holy church, he should be sent to the ordinary.

The 100s. to be paid by the university for the assise of bread and beer, is remitted to them, upon their paying 1d.

Instead of the power of enforcing the cleansing of the streets by ecclesiastical censures, the university are enabled to do it by amercements, which they are to estreat and deliver to the bailiffs of the town for the time being, to levy and receive towards the firm; but if the bailiff does not levy them within three days after the receipt of the estreat, then they may be taken for the benefit of the chancellor.

The power of banishing improper persons from the university and its precinct not having been found effectual, because such persons only withdrew into the neighbouring places, where they remained and carried on the same enormities still more—the chancellor was enabled to banish such persons 10 miles from the university.

And the king adds a general confirmation of all former privileges.

It should be observed of this charter, that it first speaks of the *steward* of the chancellor*—an officer probably borrowed from the court leet, where such functionaries presided; and the university having, at the time they procured the grant of this charter, acquired so many of the powers of the leet, it was probably found necessary that they should have this officer also; particularly as by the charter the university is directed to exercise its jurisdiction, through the medium of a jury, which it does not appear they had before any power of impannelling, as their jurisdiction was ecclesiastical. Steward.

* Vide post. Cart. Hen. VIII. to the University.

Edw. IV. Having a jury, it became necessary for them to have a steward, as the ordinary judge in the court leet.

The substitution of amercements for ecclesiastical censures (also granted by this charter), seems to complete the change of the ecclesiastical for the civil jurisdiction; and from the date of this charter, if not before, the university must be looked upon as armed, not only with the ecclesiastical, but also with the fullest temporal power.

OXFORD CITY.

Parliament It appears, from a return of members of Parliament of the 25th of Henry VI.,* that the "mayor, bailiffs, and the *whole community* of the town," elected two of their "*comburgenses*"—under the seal as well of the mayor, bailiffs, and community, as the seal of office of the sheriff of Oxford.

Aldermen. It should be observed, that the "*aldermen*," who were mentioned before the bailiffs in the return of the 2nd of Henry VI., are here altogether omitted—not because they were not electors, or did not interfere in the election, but because their rank or office of aldermen was unconnected with their voting for members of Parliament; as they did that duty only as burgesses—although, for distinction sake, they may be called by their superior title of aldermen. The result of all these early returns will hereafter appear, from those which follow.

1467. Thus, in the 7th of Edward IV., the return for the borough was made by the "*bailiff and comburgenses*;" who are stated to have elected, by *common assent*, two burgesses.†

As there is no reason for inferring, that the electors had in any manner been changed, it follows, that the "*communitas burgensium*" in the time of Henry V.;—the "*communitas*" in the reign of Henry VI.—and the "*comburgenses*" in this return, all described the same class of persons. And as it is equally clear, that there was in this interval no change in the persons to be elected, it also follows, that the "*comburgenses*" returned in the reign of Henry VI., and the "*burgenses*"

* Vide Prynn, Brady, Barnes, 143.

† Brady, 143.

here returned, were also the same class of persons—and consequently, that those words are all synonymous:—the result of which is, that both the electors and the elected, were the *burgesses*. Edw. IV.

Dr. Brady felt the force of this unavoidable inference; Brady. and therefore states, that the persons mentioned in these returns were all the same, “notwithstanding the different expressions and clerkship of the returns.” He also correctly states, that the mayor, bailiffs, and aldermen, were all the same class as the burgesses, before they were promoted to those more eminent situations; but he should also have added, that when they returned members to Parliament, they voted not as mayor, bailiffs, or aldermen—but as *burgesses*.

After drawing so correct an inference from the returns, and so properly describing the real situation of the mayor, bailiffs, and aldermen, Dr. Brady proceeds, in his usual manner, to insist upon a perfectly gratuitous assumption, and from that to draw the conclusion at which he was desirous of arriving. He says, “the mayor, aldermen, and bailiffs, were “chosen out of the fellow-burgesses, and not out of the “most ordinary and poor sort of burgesses or freemen, who “never were ordinarily or regularly of the *community*, or “common council of the town or burgh.” It would be difficult to find a sentence in any author containing more error, or more unfounded assertion, than this. It first assumes, that the comburgesses and burgenses were of a different class—which has already been negatived, by *establishing* ~~that~~ that those terms were used synonymously; and no ground whatever is surmised, nor can any be shown, for assuming that there was any such distinction, between the ordinary or extraordinary, the poorer or richer burgesses. Next it is assumed, that the community and common council Community. were the same, without any ground being stated for such an assumption, and when it is most notorious that the fact was not so. There are abundance of authorities to prove, that the *community* means the *whole body of inhabitants* of the place:—as the “community of the realm,”—or of the county—so frequently mentioned; and not any select body, either

Edw. IV. of the common council, or any other. Again, the nature of the common council, as a body selected from the burgesses at large, to counsel and assist the mayor, may be traced in a variety of charters, from the time of Edward I.* And as in many of them they are directed to provide for the good of the commonalty of the borough or town, it is clear they were not that community themselves; indeed their very office imports otherwise, and there never was a more groundless assertion.

It should also be observed, that Dr. Brady here introduces the term "freemen," for the purpose of establishing the corporate right he contended for; although there is nothing in either of the returns to justify his using that term, nor any thing that refers to it; but the terms "burgenses" or "common-burgenses" are alone used.

It is a matter worthy of remark, that notwithstanding the incorporation of Hull, Plymouth, and other places in the preceding reign; and the adoption of that term in the statutes of this; nevertheless there were many charters granted by Edward IV., which were not charters of incorporation.

Norwich. Thus this king granted a charter to *Norwich*, dividing it from the rest of the county of Norfolk, and making it a county of itself; and although charters of that description were usually charters of incorporation, yet this to *Norwich* was not of that description.

It granted to the citizens and their heirs, that the city of *Norwich* and its suburbs should be separated from the county of Norfolk, be a county of itself; and called the county of the city of *Norwich*.

Aldermen. That the citizens and their successors might for ever elect
Common 24 fellow citizens to be aldermen, and 60 fellow citizens to
Council. be the common council.

That the citizens might be able annually to elect from among themselves, one mayor who should be the escheator—

* See before, the charter of Edward I., where the four aldermen, and the eight who are to be associated with the mayor and bailiffs, are to be selected out of the burgesses.

and that in the place of their four bailiffs, they should elect two sheriffs from among themselves. That the sheriffs should have the same powers to hold courts, &c., as the bailiffs were accustomed to have. That sixty fellow citizens should be elected as the common council by the four wards of the city. That the mayor should summon all citizens *inhabiting and holding houses* in each of the wards, to the guildhall, and that the majority might elect 60 persons. The ward of Wirmere to be represented by 20 citizens—Aresford 12—Mancroft 16—and the ward over the water 12.

Edw. IV.

Norwich.
Sheriffs.

Wards.

Jurisdiction is then given to the mayor, sheriffs, and commonalty, over all real and personal actions within the borough. The citizens are not to be summoned in assises or juries without the city, unless it actually concerns the king. They are to have the property of places within the city; and the forfeiture of bread and ale. All advantages arising from the fisheries, are to be applied to the use of the citizens, —and the mayor and sheriffs, &c. of Norwich are to have all the ancient liberties without abbreviation.*

Juries.

This is a striking instance, after incorporations had been introduced, of a grant of all the usual privileges accompanying the exclusive jurisdiction of a borough, without any grant of incorporation.

BRISTOL.

The observation which we have made respecting Norwich, will apply to the important city of *Bristol*; which was also left at this period without any general incorporation; although we have before seen that peculiar corporate powers were given to the chamberlain,† one of the officers of the city:—marking in a singular manner the eccentric progress of the doctrine of corporations, at this early period of our history.

The city itself obtained a charter from the crown, inspecting and confirming the former grants,‡ and extending its exclusive jurisdiction;—but not incorporating it.

* Rot. Cart. p. 1, n. 2. 1 Pet. MS. 127.

† Vide ante, p. 827.

‡ Rot. Cart. 1 Edw. IV. p. 1, n. 6.

Edw. IV. Thus the king granted, in the first year of his reign, to the

1461. mayor and commonalty, their heirs and successors, that
Admiralty. Bristol should be exempted from the admiralty jurisdiction :
and that no one of the commonalty, nor any burgess for the
time being, nor any one *residing* for the time being within
the town, should be compelled to answer any plea before
the admiral, for any thing done upon the seas. That
neither the mayor and commonalty, nor their successors,
nor the sheriffs for the county, nor any other person *residing*
for the time within the same town, should permit the admiral,
&c. to exercise jurisdiction within the town, &c. And that
the king and his heirs would grant commissions for the trial
of admiralty causes, to the mayor and recorder for the time
being, &c. &c.

This charter is granted to the mayor and "*commonalty*"
of Bristol ; which is the most general term, including every
person in the place ;—as the "*commonalty of the realm*,"
"*the commonalty of the shire*," "*hundred*," "*diocese*,"
"*parish*," or any other "*local division*."

In a subsequent part of this charter, after mentioning the
commonalty as exempt from the jurisdiction of the admiral,
the two classes of burgesses and temporary residents are spe-
cifically mentioned, after the general term which included the
whole. But in another part, the mayor, sheriff, and com-
monalty, and persons temporarily residents, or being there,
are alone mentioned, without the burgesses.

This king also, in the same year, granted another charter,
reciting the letters patent made by Henry VI., in the 24th
of his reign, in which he committed and granted to Nicholas
Hill, then the mayor of the town of Bristol, and to the
commonalty, all the lands which Johanna, late Queen of
England, held for the term of her life, with all issues and
profits,—the castle of the town, and the ditch of the same
only excepted,—for the term of 60 years, after the finishing
of 20 years specified in the letters patent ; rendering to the
king, at the Exchequer, 102*l.* 15*s.* 6*d.* yearly ; to the abbot
of Tewkesbury, for the tithes of the town, 14*l.* 10*s.* ; to the
prior of St. James, and his successors, from the annual rent

of the mill, 60s. To the constable of the castle and his officers, and the forester of Kingswood, 39l. 14s. 6d. yearly. Edw. 1V.

The mayor and commonalty having surrendered this charter, it is re-granted to the mayor, *commonalty*, and their successors, and to the burgesses, their heirs and successors for ever:—the castle and ditch excepted. But the water-course granted to the mayor and commonalty, and their successors, and to the burgesses, their heirs and successors, is wholly reserved to the same burgesses, their heirs and successors. Fines, forfeitures, &c. of all men, as well as of all tenants, sole tenants and not sole tenants, residing and not residing in and out of fees, lands, and tenements, with their appurtenances, within the precincts of the city and county of Bristol, are also granted; with the year and a day—waste—forfeiture, &c. for murder, in the town and suburbs of Bristol—commons—waste—fines—forfeitures—view of frankpledge—hundred court—wreck of the sea, &c. &c. &c.—and fines before justices of the forest.

This charter was given on the surrender of the grant of Henry VI. by the mayor and commonalty, to the mayor and commonalty, and also to the burgesses. In the clause reserving the water-course in the ditch of the castle, the grant is stated to be to the mayor and commonalty, and the burgesses; but the resumption purports to be to the burgesses only; as if, according to ordinary parlance, all those words were in effect synonymous. In a subsequent clause, relating to the collection of the fines, they are stated to be leviable upon all persons who shall be in and of the town; and the officers are described as of the commonalty only, without noticing the burgesses. In the remainder of the charter, the commonalty are mentioned alone, without naming the burgesses. Yet the grant must be intended to be made to the same persons throughout:—and consequently the “commonalty” and “burgesses” are in effect the same persons.

CANTERBURY.

After the first grant to Bristol there follows, upon the charter roll, a confirmation of the previous charters to Can- 1461.

Edw. IV. *terbury*, commencing with a recital, that Canterbury had been one of the most ancient cities in England; and that the mayor and citizens, their heirs and successors, might enjoy more ample liberties, it grants and confirms all the previous privileges.* It also recites the charters of Henry IV. and Henry VI., and that various ambiguities had arisen respecting a provision contained in his second charter of Henry VI.,

Mayor. as to the re-election of the mayor, in case of his death during his mayoralty; upon which it grants to the mayor and commonalty, their heirs and successors, that whensoever it should happen that any mayor of their city should die within the year next ensuing after he should have taken his oath, or

Absence. should *absent* himself from the city without a deputy, or should be for any other offence removed; that then the aldermen for the time being, or the major part of them, might

Borough-mote. summon and convene a *boroughmote*; in which the citizens might elect one other person from themselves to be the mayor of the city.

Coroner. The king also, after directing the election of a coroner, proceeds to state, that attending to the great and lamentable complaint of the mayor and citizens, that the city, and the *inhabitants* thereof, were in great poverty from the payment of the fee-farm of 60*l.* per annum, and other necessary charges incumbent on the city; and that from the small number of inhabitants there, the city was so depopulated and destroyed, that the inhabitants were in want of necessary means—he pardoned and released 16*l.* 13*s.* 4*d.* per annum out of the fee-farm of 60*l.*

All manner of fines, issues and amercements before the keepers of the peace, &c. are given to the citizens; and the charter then proceeds to grant (with the exception of certain lands, which are the fee of the Archbishop of Canterbury, and the castle of Canterbury), that the city should be

County of itself. one entire county of itself, in deed and name, and distinct and wholly separated from the county of Kent, and should for ever be named, called, and entitled, the county of the city of Canterbury.

* Rot. Cart. 1 Edw. IV. p. 1, n. 8.

The bailiffs of the city of Canterbury were in future to be Edw. IV. the sheriffs, preserving all the liberties and powers which Return of Writs. the bailiffs hitherto had; and to have the return of all writs within the city and precincts, which ought to be directed to the sheriff of the county of Kent, and by him to be served and executed, as if the same city and precincts had not been made an entire county of itself.

The sheriffs are directed to account before the barons of the Exchequer. The coroner of the city is to be the coroner Coroner. of the county of the city: and the mayor, commonalty, and their heirs, are discharged from being collectors of any tax except those within the city of Canterbury.

The following clause then occurs:—

“ Provided always, that by force of our present grant, no injury shall in anywise be produced to the mayor and commonalty of the city aforesaid, as to other the liberties, franchises and immunities, customs, constitutions and quit-tances, to them or to their predecessors, by us or our progenitors heretofore granted to them, or to the late bailiffs and citizens of the said city, or by them used.”

The mayor is then appointed escheator, and provisions are Escheator made for the re-election of a bailiff in case of death.

The next charter upon the roll is one expressly of incorporation. However it is not granted to any city, borough or town:—but gives privileges to the *inhabitants* living within Romney Marsh; and commences by reciting, that it was subject to the invasion of the enemy; but that at the special requisition of the whole community and *inhabitants*, it was granted to the *inhabitants* and *resiants* within certain metes and bounds, that they should be one body in name and deed, and one *perpetual commonalty* of one bailiff and 24 jurats, of the commonalty of Romney Marsh, and should plead and be impleaded, by the name of the “bailiffs, jurats, and commonalty of Romney Marsh:”—after which the usual corporate powers and liberties are given.* Romney Marsh.

This instance is the more worthy of remark, because it

* Rot. Cart. Edw. IV. p. 2, n. 3.

Edw. IV. will be remembered, that we have before referred, amongst other aggregate bodies, to the commonalty of Forests, at a period when they could not have been incorporated; and here we have an instance, at this time, of an aggregate body, coming within the same analogy, expressly made a body corporate.

Rochester.
1460. After this, follows a charter of incorporation for the city of *Rochester*.*

The previous charters from time to time have been mentioned, but none of them were charters of incorporation.

This grant recites, that the citizens had complained to the king, that ambiguity, obscurity, and difficulty of certain words, and general terms, had prevailed in previous charters to the citizens of Rochester; and therefore the king provides, that the citizens and their successors, should thenceforth for ever be of one mayor and citizens, one body perpetual, and one community perpetual in fact and name; and that they might have perpetual succession; that the then bailiff of the city should be the mayor; that the mayor and citizens, and their successors, should be for ever so called; and by that name, be persons enabled and capable in the law to purchase lands, tenements, rents, and other possessions whatsoever, to hold for them and their successors for ever. That the mayor and citizens might plead and be impleaded; and answer, prosecute, and defend by that name; and that they should have a common seal. That upon the departure of the mayor from the city, or his removal, the citizens of the city might elect some other fit person to be the mayor.

Officers. Provisions then follow for the appointment of serjeants-at-mace, coroner, and constables; and that the coroner of the county should be excluded from jurisdiction in the city.

Non-intromit. That the mayor and citizens for the time being, and certain citizens to be thereunto called by the mayor, might have for ever, power of searching all manner of merchandise shipped within the city, and the assise of bread, wine, ale, &c., and all other things appertaining to the clerk of the market.

Assise of bread.

* Rot. Cart. n. 4.

That all *men, residing and abiding* in the city, be acquitted Edw. IV. throughout England, of toll, talliage, &c. ; and be *exempt* Exempt from shires, &c. *from suits at county shires*, and hundreds, and laths of hundreds. That the mayor and citizens should have all goods and chattels of men *residing* within the city, outlawed for treason, or felony, &c. That the mayor of the city, having called unto him two of his more discreet fellow citizens, should hold in the court of *portmote*, from 15 days to 15 days, all Portmote. personal pleas, &c., arising within the city. That the mayor should have the return of all writs and precepts ; so that no Return of writs. sheriff, or other minister, should enter within the city. That the mayor and citizens should have all manner of fines for Fines. trespasses, &c. ; and that they and their successors might for View of Frankpledge. ever have a *view of frankpledge* within the city.—A fair, and court of pie powder, are also granted. The mayor, and some man learned in the law, were to be keepers of the peace, with Justices. the usual powers attendant upon such offices. And the keepers of the peace in the county of Kent, were not to enter within the city, &c. ; and the mayor and citizens, &c., residing within Non-intromit. the city, liberty, and precinct, were not to be placed on juries, attaints, &c., against their wills.

Licence is then given to the mayor and citizens, and their Mortmain. successors, to hold lands to the value of 20*l.* per annum, notwithstanding the Statute of Mortmain.

It will be observed, that this charter of incorporation, and those which have preceded it, as well as those which will follow, in effect, grant the same privileges as those contained in the charters, which are not incorporating grants ; and that there is no distinction between them, excepting that those which incorporate the burgesses, merely give to them, in addition to their former privileges, the right of being a body corporate, with perpetual succession—of having a corporate name—suing and being sued—and holding lands by that name—which are the essential characteristics of a corporation ; but all the borough rights—the municipal government—the class of burgesses—their privileges—their courts—and customs—are left untouched and unvaried ; which is the important consideration to be kept in view, in investi-

Edw. IV. gating these charters, and cannot fail to satisfy every dispassionate mind, that "incorporation" is only an incidental—collateral—circumstance, connected with the borough; which neither materially alters its nature, constitution, nor privileges; nor the character of its burgesses.

Stamford. After the incorporation of Rochester, follow those of *Stamford* and *Ludlow*; the franchises granted being substantially the same, we shall refrain from further adverting to them.

Southampton. *Southampton* also received a confirmation charter, but this place had been incorporated by Henry VI.

Colchester 1461. There was a confirmation of former charters and liberties to *Colchester*, without incorporating it. And the grant recites by inspeximus the charters given by Richard I., Henry III., and Richard II.; and confirms them.* And further grants to "the bailiffs and burgesses," that they and their successors, burgesses of the borough of two bailiffs and one commonalty thenceforth for ever should be one body and one commonalty perpetual, in name and deed—that they should have perpetual succession, and be persons fit in law, and capable to receive lands, tenements, rents, and other possessions, to hold for them and their successors for ever; and that by the same name they might implead, and be impleaded, answer, prosecute, and defend in all pleas: with the several other usual liberties and privileges.†

Perpetual body.

THE DRAPERS OF SHREWSBURY.

1461. There is also in this year, a charter of incorporation of another aggregate body.—It was granted to the mystery of *Drapers* in the town of *Shrewsbury*, reciting, that they had petitioned the king to be established as a fraternity or guild of themselves. And in consequence thereof, the king had granted that there should be erected a fraternity or guild of the mystery of Drapers in Shrewsbury; and that they should find and support a chaplain to perform divine service daily, as long as the king should live, for the benefit of his soul, and for those of his progenitors, &c. That they should have

Guild.

* Mad. Fir. Bur. p. 28.

† Rot. Cart. 1 Edw. IV. n. 1.

the name of "the fraternity of persons of the mystery of Drapers of the town of Shrewsbury." And that the brethren and sisters should be by themselves a perpetual community *incorporate* in fact and name, and should have perpetual succession. Provisions then follow for the election of the masters and wardens. The charter then directs that by the name of "the master and wardens, and brethren and sisters of the fraternity or guild of the Holy Trinity of persons of the mystery of Drapers of Shrewsbury," they should be persons able and capable in law to purchase and receive in fee and perpetuity, lands, tenements, &c. And by that name they might plead and be impleaded—have a common seal—have lawful meetings of themselves, and make lawful statutes and ordinances for the governing of the fraternity or guild, without the hindrance of any justice, escheator, sheriff or coroner, &c.

Edw. IV.

Name.

Incorporation.

Non-intromittant.

A clause then follows, at the close of the charter, giving the guild a power to hold lands and tenements to the value of 40*l.* yearly, notwithstanding the Statute of Mortmain.

It should be remarked, with respect to this charter, that it seems the Drapers had existed before as a body in Shrewsbury, but that it required this grant to make them an incorporation:—and it should also be observed, that the incorporation of these bodies, is precisely the same as those of the burgesses, and consequently, that privilege should always be considered by itself, without reference to its connexion either with the boroughs or the guilds, to neither of which is it essentially.

POOLE.

A grant of this date contains an *inspeximus* recital and confirmation of the first charter of Henry VI., to the mayor and burgesses of Poole, and their *successors*. This latter term is ordinarily appropriated to corporations: who take by succession, and not by inheritance. But this is the first time it is used, and is the first instance in which any term is applied to this place which raises any inference of its being a corporation. If it should be urged, that this word, by its

1460.

Edw. IV. mere legal import, incorporated the burgesses; still it is clear that it could not affect the right of election, which had been previously exercised by the burgesses, before they were incorporated. And even if it incorporated the borough, it did not in any respect pretend to alter the qualification for being a burgess, or the mode of election or admission:—but the mere effect of this charter, taken in its fullest extent, was to incorporate those who before were burgesses. The term “*successors*,” was generally introduced into the charters of this reign, probably in consequence of the doubts which had been suggested by the lawyers, whether the *inhabitants* could take by *succession* if they were not incorporated. The ecclesiastics had long before taken grants to themselves and their *successors*;*—but grants to boroughs in that form are not found in the earlier reigns; in which numerous grants are to be met with to the burgesses and their *heirs*, as we have before shown, and which are commented on by Madox in his *Firma Burgi*.† It is well observed by him, that the grant of Magna Charta by Henry III., was to the freemen of England and their *heirs*—“*liberis hominibus regni nostri—habendas et tenendas eis et hereditibus suis.*”

1472. The return of members to Parliament for Poole for this year was made by the burgesses: and there is no ground for saying that at that time there was any select body, or that the burgesses then differed from those who had returned in the time of Edward III.

Grantham. A charter to *Grantham* succeeds in the next year,‡ granting
1462. to the alderman and the burgesses of the town of Grantham,
Corporate. that it should be a free borough, *corporate* in name and deed,
of the alderman and burgesses; that they should be free
Guild. burgesses; that they should have a mercatorial guild, with
the same liberties as the burgesses or *inhabitants* have been
accustomed to have: and that the alderman, burgesses and
their successors, should be *corporate*, and one perpetual com-

* See an instance, *Mad. Fir. Bur.* p. 40, in note (h).

† *Mad. Fir. Bur.* pp. 42, 43.

‡ *Rot. Cart.* 2 *Edw. IV.* n. 3.

monalty, by the name of "Alderman and Burgesses of the Borough of Grantham," with perpetual succession, and powers to hold and give lands—plead and be impleaded—and to have and use a common seal. That the burgesses might elect from among themselves, 13 comburgenses; and name one of them annually to the office of alderman. That none of the burgesses should be placed upon assises or juries, or bear any office of burden without the borough. Jurisdiction is then given to the alderman and the comburgenses over real and personal actions; that they should have the fines and forfeitures of all criminals within the borough; and that no steward, marshal, or clerk of the market, is to enter within it. That the alderman and burgesses should elect a coroner; and that no other coroner should intromit. The privileges of exemption from toll, &c., and the return of all writs, conclude the charter.

Edw. IV.

Juries.

Return of writs.

This grant resembles, even more than the preceding, the ancient charters: and is in the same form as those of the earliest date; excepting only that the additional capacities of incorporation are given to the burgesses.

The king, after confirming all previous charters, grants to the burgesses of *Launceston*,* that they might have the election of their *reeve* to answer for the ferm of their borough. That the burgesses should not plead without the borough for anything, unless what belonged to pleas of the crown,—that no sheriff should buy or take anything of any person in the borough, unless with his consent; and that the borough should not be talliaged, except when every other borough in England talliaged.

Launceston.
1462.

This, it will be observed, is not a charter of incorporation.

In the next year, the king, a second time *incorporated* the burgesses of *Ipswich*,† with the usual corporate terms; and also appointed twelve port-men to be keepers of the peace, to hear and determine all felonies, &c.; giving likewise the goods and chattels of all persons holding, *residing* and not residing, *inhabiting* and not inhabiting, within the town, who should commit any offence or fly, and not stand to judg-

Ipswich.
1463.
Incorporate.

* Rot. Pat. p. 3. † Pet. MS. 171.

† Pet. MS. 281, et Rot. Cart. n. 4.

Edw. IV. ment;—together with the assise of bread and beer; and general jurisdiction over all pleas real and personal; with an admiralty jurisdiction; excluding all the king's officers, escheators, and the admiral; giving exemption to all those *residing* and *dwelling* within the borough, from serving upon juries, &c., and being collectors of tenths and fifteenths.

**Non-intro-
mittant.**

The peculiar documents we have before extracted relative to Ipswich, will be in the recollection of the reader, and compared with this, and the former charter of incorporation, will confirm our observations as to the recent introduction of that privilege.

Villains. As confirmatory also of our former doctrine relative to *villains*, we may quote the following passage from Kirby, the industrious Suffolk traveller, who says,—“That after the enfranchisement, the burgesses would not admit a *villain* to be *free* of Ipswich; and by an order 23 Henry VII., each one, before admission, was to swear he was a *free man* of England;”—and this for good reason, because no villain could be a burgess till he had resided a year and a day, without claim from his lord, in the town; and if the burgesses enrolled him as a burgess before that time, they would be liable to the lord of the villain, for entertaining him and keeping him from his lord. Nor should this expression of “*free man of England*,” so consistent with the feudal law, and with the positions we have maintained, be overlooked; as in truth it explains the whole subject, and places it upon its proper basis. It should be remarked, that the ordinance in the time of Henry VII., carries the doctrine of villainage distinctly down to that period.

Freemen.

DARTMOUTH.

Pursuing the chronological succession of the documents which occur, we arrive at a grant of considerable importance to the borough of *Dartmouth*. But we will preface its introduction by a concise statement of its early history and previous charters;—and for the purpose of illustrating the effect of the charter of Edward IV., the subsequent par-

liamentary history and municipal documents will be traced Edw. IV.
until modern times.

This place is properly called Clifton—Dartmouth—Hardness:—being in all probability, composed originally of three villages so named.

The first and the last are not mentioned in Domesday Book. Dartmouth is mentioned there, but only slightly, and nothing is stated which refers to its being a borough,—indeed, the entry does not expressly mention Dartmouth, or its ancient name—Dertmere; but it has *Derte*; which no doubt refers to this place.

In the reign of King John, the quinzime for the merchandise of Dertmere is accounted for. 1205.
6 John.

In the first of Henry III., William de Cantelupe and Eve his wife, agreed that a market should be held here weekly on Wednesday, and on other days; for which a fine was levied. 1216.
Hen. III.

From the Cantelupes it came to the Zouches: and so by purchase to the Dawneys, who conveyed it to the Tewxburys, who were merchants;* from whom it eventually came to the crown.

In 1298, Dartmouth first returned members to Parliament. 1298.
26 Edw. I.
From which time it intermitted till after the charter of the 15th of Edward III.; and, returning the 24th of Edward III., it has ever since sent members to Parliament.

An inquisition “ad quod damnum” was issued of this date, to Nicholas de Cheyney and Robert de Stokhey, to certify whether it would be to the prejudice of the king or any other, that it should be granted to Nicholas de Tewxbury, that the town of Clifton—Dartmouth—Hardness, should be a *free borough*; and that the men *inhabiting* and hereafter to inhabit, should for ever be free burgesses. That they should not be placed in assises or juries without the borough by reason of their foreign tenures, as long as they remained in the town. That all the *inhabitants* in the town, and all who should thereafter inhabit there, might devise their lands and goods to whom they would, but not in mortmain. And that no person should be convicted Inhabitants

* Bro. Willis, vol. 2, p. 364.

Edw. IV. by foreign men for any transgressions within the town, but
 Men. by the *men* of the town, unless such transgressions should concern the king or his heirs, or the *community* of the town; and inquisitions as to transgressions without the town, were to be made by a moiety of the *men of the town*, and *foreign men*.

And the jurors found, that Dartmouth was a free borough in the time of Henry I., and "*that all persons residing ('manentes') in it were free burgesses;*" and that it would not be prejudicial to the king, that the said liberties should be granted.

1327.
 1Edw.III. Nicholas de Tewxbury, in this year, granted to Edward III., the town (villam) of Clifton, Dartmouth, and Hardness, and the port of Dartmouth, with its appurtenances, liberties, &c.

1337.
 11Edw.III. Edward III. granted a charter "to the *men* of the town, their heirs, and successors, *men* of the town."

1341.
 15Edw.III. The same king also granted another charter to the burgesses of this borough, in consideration of the losses and hardships they had sustained in the wars, and the expence they had incurred in fitting out two ships of war, which by that charter they were to continue to do. It grants the burgesses the usual freedom from tolls, &c.: and gives them
 Mayor. power to elect from amongst themselves a *mayor*, who, amongst other things, was, with the bailiffs, to hold pleas concerning the borough.

It also enables the burgesses to dispose of the lands which they had, and might have within the borough. From whence it appears that they had acquired lands before they were a corporation; and that they were, by this charter, (which does not incorporate them) enabled to sell those lands, the power of their acquiring other lands being also recognized.

It likewise grants that they should not be impleaded elsewhere than within the borough, for any foreign tenures within the borough; or any contracts or other thing done or happening within the borough, unless those pleas affected the king or the *community* of the borough. It grants infangthef and outfangthef, and the return of writs; with a non-intro-

Comm-
 unity.
 Return of
 writs.

Lands.

mittant clause, except in default of the mayor. It exempts ^{Edw. IV.} the burgesses from serving on juries; by reason of the tenure of lands out of the borough, or for transgressions or contracts out of the borough, *as long as they shall remain within it*—and that *foreigners* shall not be put with them in assise. ^{Foreigners.} It likewise provides against forestalling; and enables the burgesses to dispose of their lands within the borough by will.

In the 24th of Edward III., this borough returned bur- ^{1350.}
gesses again to Parliament. ^{24 Edw. III.}

Richard II., in the second year of his reign, confirmed the ^{1379.}
charter of Edward III. ^{2 Rich. II.}

And in the 17th year of his reign, that king, in considera- ^{1394.}
tion of the losses the burgesses had sustained by the war, ^{17 Rich. II.} and their being obliged to find the two ships mentioned in the charter of Edward III., grants them cognizance of pleas of lands within the borough; with power annually to elect at their will amongst themselves a *coroner*, with a non- ^{Coroner.} intromittant clause as to other coroners.

In the reign of Henry VI. the members for this borough ^{1448.}
were returned in the county court. ^{26 Hen. VI.}

That, however, was done occasionally by many other boroughs; and notwithstanding the inference which Dr. Brady is anxious to draw from that circumstance, it appears, in fact, to show nothing more than that a few of the burgesses went to the county court, and there returned the members, instead of sending a written return.

Edward IV., at this period, granted a charter to Dart- ^{1463.}
mouth which, reciting the complaint of the mayor and burgesses, that the village of Southtown being near their borough, they were obliged to keep watch at night on the confines of that village, without any assistance from the *inhabitants* of ^{Inhabitants} the village; who are by no means protected by the liberties of the mayor and burgesses; and also reciting the services which the mayor and burgesses had rendered the king; and that the larger the precincts of the borough should be, the more people would *reside* within it; and the obligation ^{Reside.} which the *inhabitants* of that village would feel to the king,

Edw. IV. if they enjoyed the same privileges as the burgesses of the borough. He then proceeds to confirm all former charters, and annexes and *incorporates* the village of Southtown with the borough of Dartmouth, making them one borough; and directs that the *inhabitants* of the village should be *burgesses* of the said borough, and enjoy all the privileges, &c., as the other burgesses; and grants to the mayor, bailiffs, and burgesses, the return of writs, with a non-intromittant clause as to all other sheriffs. And that they should hold in their guildhall before the mayor and bailiffs all pleas, with all fines and amercements,—also a view of frankpledge, and all which belongs to it, within the said borough and village, and liberties thereof. The charter repeats the power to hold all lands, which they did not hold of the crown in capite, freely and quietly, notwithstanding the Statute of Mortmain.

**Incorpo-
rates.**

**Frank-
pledge.**

With respect to this charter it should be observed, that in annexing the village of Southtown to Dartmouth, it speaks expressly of the *inhabitants* of the village, and subsequently directs that those inhabitants should have the same privileges as the burgesses—a stronger inference can hardly be afforded, that the inhabitants of the borough were then the real burgesses—no previous election out of the inhabitants is directed, nor any other act required; *but by virtue of their inhabiting they are to enjoy the liberties of the borough*. It is true that the charter, granting a view of frankpledge, extending over the village, the inhabitants, or to speak technically, the *resiants* there, would owe suit at that court, and, consequently, would be *sworn* there: but that would be the only act necessary to complete their title to be burgesses. Indeed it is curious to observe how strongly illustrative this charter is of the doctrine, that the ancient burgesses were the inhabitants or resiants of boroughs, doing their suit at the borough court leet, or view of frankpledge. Before the village of Southtown was annexed to Dartmouth, in consequence of being without the borough, the inhabitants there would have owed suit at the *sheriff's tourn*; the charter, therefore, in the first place, ousts, by the non-intromittant clause, the jurisdiction of the sheriff, and then grants a view

Inhabitants

Resiants.

**Sheriff's
tourn.**

of frankpledge ; by doing suit at which the inhabitants there would be free from all jurisdiction of the sheriff or other leets. Edw. IV.
1463.

It should also be observed, that this charter is granted not only to the mayor and burgesses, as the former charters were, but also to the bailiffs, of whom mention is not made before. And to show most clearly that boroughs, at that time, were not incorporated in the form which became more common in the succeeding reigns, it will be seen, that, although in annexing the village to the borough, the charter uses the word "incorporate," it is applied in its primary and simple meaning; and not used in its technical sense to describe a corporation, of which there is not any other appearance throughout the charter. If grants of incorporation had then been general, it is impossible that this charter, under the particular circumstances of this case, should have omitted the ordinary terms and forms of incorporation, which would have been so perfectly applicable to these two annexed places. Incorporation.

With reference also to the *residence* of burgesses without the borough, which is often met with, it should not be overlooked, that this charter, speaking of the pleas which are to be held in the guildhall, describes them thus: "omnia placita realia et personalia et *juxta* infra burgum villatam et libertatem prædictam,"—using the word *juxta*, and speaking in the usual language of other charters of the "*liberties*" of the borough, as if they extended into the suburbs, beyond the mere local limits of the borough; in analogy to the precincts of the forests. Residence

This charter also affords a strong inference against the doctrine, as to boroughs being the towns held of the king, because it expressly speaks of the lands held by the burgesses, which were not held of the king in capite.

It is said, that in this same reign the port of Fowey was removed to this place.

The next document which occurs, relative to this borough, is an indenture between Henry VII. and the mayor, bailiffs, and burgesses of Dartmouth, by which they covenanted to complete the tower and bulwark they were then building, 1485.
1 Hen.VII.

*Borough
not held
of the K*

Edw. IV. and to keep a chain across the harbour; in consideration of which, the king thereby grants them 40*l.* yearly, out of the customs and subsidies of the ports of Exeter and Dartmouth.

1511.
2 H. VIII. Next follows a charter of Henry VIII., which recites a grant, in the first year of his reign, to William Crane, gent., of the office of water bailiff of the town of Dartmouth, parcel of his duchy of Cornwall, to hold by himself or his deputy at the king's pleasure; and that Crane had resigned his office: which the charter then grants to the mayor, bailiffs, and burgesses; and the port, liberty, and precinct of the same, to hold of the king and his heirs, dukes of Cornwall, at the rent of 12 marks, to be paid at the Exchequer at Lostwithiel:—and that the mayor, bailiffs, and burgesses, at their will, as often as need be, may appoint a burgess or other person to be deputy water bailiff.

An inquisition post mortem of the same reign, states, that the Carews possessed the manor and borough of Dartmouth at that time.

Court leet There is a book of the same period, which shows the transactions of the curia regalis, or court leet, which was held before the recorder, and at which were present the mayor, bailiffs, and “*all the other burgesses, commons, and inhabitants franchised in the said town;*” and they are stated to be assembled for the common weal of the town;—and the mayor, bailiffs and burgesses, commons and inhabitants, ordain, that no mayor should make any *freeman that dwelled out of the town*: and that if he do, that freeman should not enjoy the liberties and franchises of the town, unless he *should come and dwell within it*.

Residence. *out of the town*: and that if he do, that freeman should not enjoy the liberties and franchises of the town, unless he *should come and dwell within it*.

Foreigners. And that all *foreign* burgesses which be made *freemen* of the town, and *dwell* out of it, in places not franchised, should, before a day mentioned, *come and inhabit* within the town; upon pain of losing their liberties; and not to be taken as *freemen unless they come and dwell there*.

It will be observed how directly this is in accordance with the charter of Edward III., and the inquisition in the reign of Edward II., which found that the “*manentes*” ought to be the *liberi burgenses*; and that the “*forinseci*” should be excluded.

At the court leet held at Michaelmas, a person is admitted into the liberties and franchise of the town in full court, before the recorder and mayor.

Edw. IV.

1512.
3 H. VIII.

Many persons are sworn, and made free burgesses in the court leet in the 10th year of this reign and several succeeding years.

1519.
10 H. VIII.

Edward VI. and Queen Mary confirmed the charters which had been granted by their predecessors to Dartmouth.

1546.
1 Edw. VI.
1553.
1 Mary.

We find also from the constitutions of the borough, that it was agreed by the mayor, his brethren, and the whole council of the town, that no mayor, for the future, should make *free* any manner of person whatsoever without the consent of the council of the town.

Here the power of making freemen by the mayor, with the assent of the council, as well as the previous exercise of the power of making them, seems to have been assumed; but in what manner that power was acquired, or when it originated, does not any where appear; neither is there any charter to show how the common council was created; nor when the privilege of making bye-laws was given. It is impossible to believe, that the two returns prior to the charter of Edward IV., were by the persons made free by the mayor; nor could the burgesses, to whom the grant of that charter is given, be of that description; because burgesses appear to have existed before that charter, and the mayor is created by it. Neither could such freemen be the burgesses, to whom the charters were granted in the reigns of Richard II. and Edward IV., as it is clear, by the last charter, for the reasons mentioned before, that the *inhabitants* were the burgesses there referred to: but, however they originated, if they were, according to modern language, freemen of the corporation, they could not be the persons who were entitled to vote for members of Parliament, because that right had, as early as the time of Edward I., been vested in another class, namely, the ancient burgesses. It is true, the mayor might have the right, with the assistance of the jury or common council, if there were such a body, to admit, swear, and enroll such inhabitants as appeared to be free; and as

Burgesses.

Inhabit-
ants.

Edw. IV. they seem to have exercised that right, it must be inferred, it was done under some lawful title. It must therefore be considered as the admission of the *liber homo*, or free burgess, under the common law: which he might lawfully do, and which reconciles the whole with the doctrines we have before extracted from the Saxon laws, and confirmed by subsequent documents. This power of making freemen of the corporation, if such a power existed, could not possibly have any thing to do with the electing of members of Parliament. And it should be observed, that the decision in 1701 was against the party who petitioned on their right.

1558.
5 Mary. In the fifth year of Queen Mary, a person who had been disfranchised, was ordered to be treated as a "*foreigner*;" showing distinctly the meaning of that term.

1559.
1 Eliz. Queen Elizabeth, in the commencement of her reign, confirmed by *inspeximus* the charters of the 15th of Edward III. and the 3rd of Edward IV.

The latter being in fact the governing charter until the reign of James I.

1561.
4 Eliz. In the fourth year of Queen Elizabeth, the jury at the court leet present the misconduct of the mayor, in using Commons. the common seal without the consent of the whole *commons*; and they direct, that the common seal should be delivered to two commoners and one of the masters.

1577.
19 Eliz. It appears about the same time, from the entries in the books, that *freemen's sons* were admitted gratis; a right founded upon the common law of *freedom by birth*, as has been already shown. And although there are many entries of that description, as well as of persons entitled by *apprenticeship*, during the whole of this and the following reigns, and they are stated to be according to the ancient custom; yet, in modern times, the select body of the corporation claimed the sole right of *electing* freemen, and excluding all persons, not excepting sons and apprentices.

1603.
1 James I. In the first year of King James I., there was a presentment at the court leet, of a person in Southtown, for having an Inmate. inmate who had been recently married.

That king granted a charter in the second year of his reign, directing that the mayor, recorder, and last preceding mayor, and all last and next preceding mayors, *residing* within the borough, should be justices.

Edw. IV.

1604.
9 James I.

And that the mayor, and magistrates or councillors, having called together to them 12 of the most honest and discreet burgesses, might make bye-laws.

And as a confirmation, that it was not until this period that attempts were made to set up the corporate usurpation, it should be observed, that the word "corporation" did not occur in the early documents relative to this place, (a fact which there has been occasion to mention before with reference to many other places.) The term used prior to this period being the "borough," for which "corporation" was from this time substituted in the borough books.

In the fifth year of James I., there is an entry of a freeman's eldest son, admitted gratis; and a fine is mentioned, which had been assessed upon him by the grand jury at the last law court, for keeping open his shop before he was admitted.

1607.
5 James I.

In 1610, an allowance was made to the member in Parliament for his charges by the general consent of the town.

1610.
8 James I.

A person who had theretofore been a freeman, but had *dwelt* out of the town *a year and a day*, was, upon his entreaty, and upon paying a fine, re-admitted to his freedom, and sworn again.

1611.
9 James I.

After this entry follows a description of what seems to have been treated as the common council; a person is stated to be sworn to serve as one of the 12 burgesses, who are to have a voice in the making of constitutions and disposing of the town's revenues. From which it appears clearly, that the persons who are to make the bye-laws, were only common burgesses elected for that purpose; and constituted, as it were, a committee of *representatives* for the whole burgesses, having only a *delegated* authority. Their number being 12, the probability is, that they originally were, as we have shown in other places, the *jury* for the year.

Common
council.

There are also other instances about the same time, of persons who had *lived out of the town* being *restored* upon their

Edw. IV. return, in strict conformity, as has been seen before, with the common law.

1613.
11 James I. Another example occurs in this reign,* of direct interference by a nobleman in the election of the members to Parliament, in a letter from the Earl of Northampton to the mayor, burgesses, and commonalty of Dartmouth, requesting leave to nominate one of the members.

1620.
18 James I. It was agreed by the common council, that half the *5l.* to be paid to the members, should be paid by the town stock, and the other half by the *commons* and *inhabitants*, by a rate and collection.

1631. The masters or brethren make a bye-law, assuming to themselves the right of self election.

1627.
3 Cha. I. A letter appears from the lord president to the corporation, recommending them to choose his servant, Mr. Robert Dickson, to represent the borough in the next Parliament.

An answer was returned, saying, that they had "acquainted the commons, who have their free voices in the elections as well as we, with the contents of the letter, who, presuming upon their freedom in choosing whom they thought fit, had elected, or would elect, men free of the corporation, well known unto them."

1638.
14 Cha. I. It appears from this and other entries in the corporation books, that the freemen, who we have shown before to be the "*liberi homines*" of the common law, were called "the freemen of the corporation," a term totally unknown to the law, and legally speaking, unintelligible—and in one of the cases peculiarly inapplicable, as it is applied to the instance of an eldest son, whose right was altogether grounded upon the common law.

1639.
15 Cha. I. Another change in the entries occurs about this time, showing the gradual progress of the corporate usurpation upon the original rights of the ancient freemen, by the introduction, for the first time, of the word "elected;" to give colour to the supposition, that the corporation had the right of "electing" according to their will and pleasure, and as they should think fit:—instead of their being obliged, accord-

* Vide ante, Paston Letters, p. 911.

ing to the common law, to *admit, enroll, and swear* all the *free inhabitants* who had resided a *year and a day* in the place. Edw. IV.

Here the extracts from the books of Dartmouth, so illustrative of the real ancient state of the borough, must cease; because the other books were strangely lost, subsequent to an election petition in 1793, when they were produced before a committee.

It however appears, that about this period, certain lands were conveyed, by a Mr. Pluninge, to the use of all the *inhabitants* of the town. 1646.
22 Cha. I.

“Mr. Serjeant Wallis reported from the committee of elections and privileges,* the case as to the double return upon the election of burgesses for Dartmouth. Wherein the question being, whether the election ought to be by the mayor, bailiffs, and *freemen* only of the said borough—or by the mayor, bailiffs, freemen, and other *inhabitants* of the said borough, though not free—and that the opinion of the committee was, ‘That the *inhabitants* of the said borough ‘have *not* voices together with the freemen of the said ‘borough.’ 1658.
9 Cha. II.

Freemen.
Inhabitants

“The question being put, that this House doth agree with the committee in this report:—

“The House was divided. The noes went forth:—

Sir John Northcote,	}	Tellers for the Noes,	}	119
Mr. Reynell,	}	with the Noes.	}	

Sir Walter St. John,	}	Tellers for the Yeas,	}	113
Mr. Wiggins,	}	with the Yeas.	}	

“So the question passed with the negative.”

From this period to 1737, an interval of 71 years, there is a considerable chasm in the history of the transactions of this borough, in consequence of the loss of a book, which contained the transactions of that period; and which has only recently been missing, for it was produced in 1822, by 1666.
18 Cha. II.

* 7th Journal, p. 618.

Edw. IV. an alderman, who then acted as town clerk, before the commissioners for inquiry into public charities.

1672.
25 Cha. II. It appears, however, that about this time a constitution was made, that no person should be made *free* without the consent of seven magistrates. This order is open to precisely the same observations, with respect to the authority by which it was made, as that of the reign of Queen Mary:—~~and~~ and also with respect to the impossibility of its referring to the same class of persons by whom the earliest returns were made, and to whom the early charters were granted. This constitution differing from the former, in requiring the assent of the *magistrates* instead of the common council or jury, is in effect destructive of the legal authority of both,—for it shows that there was no ancient accustomed course for this matter; and if so, it could not affect the ancient right of representation:—the practice could only be changed by the corporation, if it was something immediately within their controul: and if it was so, then it could have nothing to do with the parliamentary right, which clearly existed before the corporation, and independently of it.

1681.
34 Cha. II. In a bye-law shortly subsequent to this period, the burghesses are called the “populace,” or “common free burghesses:” a term so general, that one would conceive it impossible that they could have ever been applied to any selected body of a corporation.

1686.
2 James II. The constitutions of the borough of the reign of James II., signed by the judges of assise, are not now to be found; and in one of the books of the corporation relative to this period, 16 pages or more appear to have been taken out.

1672.
24 Cha. II. There was a petition against the return for this borough, but nothing appears to have been done upon it:—it was twice put off, and probably was not presented again.

1685.
1 James II.
1672.
25 Cha. II. There were about this period two petitions against the returns for this borough, but there is no report upon either of them;—however the petitioner in the latter appears by some means or other, to have obtained a seat for this place,

Vide, ante. 979

his death as a member for it appearing four years afterwards, Edw. IV. and a new election takes place in consequence.

In the first year of William III., a petition is presented, ^{1689.} _{W. & M.} complaining that the petitioner had been elected by a great majority of the legal *freemen*, and was accordingly returned _{Freemen.} by the bailiff* and burgesses; but one Mr. Whitrow, as mayor of the town, though not legally chosen, took upon himself illegally to make 25 new freemen after the date of the writ, and by those new pretended freemen, and some of the former freemen's election, returned Mr. Booth in prejudice of the petitioner.

On the 28th of November, the report of the committee was made, in which it was stated that the right of election was in the *freemen*† of the borough; and that the election depended upon the allowing or disallowing of 24 votes, which had been given for Mr. Booth, by freemen who were made on the 17th of August, *not on a court day*; the writ for the election in the place of the deceased member, being ordered by the House on the 13th of August, and tested on the 16th, on which day it was discussed at Dartmouth.—It was admitted, the mayor might call a court on any day:—that formerly‡ the freemen were made by the consent of the mayor, and the greater part of the magistrates of the borough—that when these freemen were made, there were only five magistrates, besides the mayor, two of whom were unqualified for not taking the oaths:—and at the meeting at which these freemen were made, there were only present three magistrates and the mayor:—Mr. Mudd and Mr. Holesworth protested against their being made, but Saunders agreeing with the mayor, (Mr. Whitrow,) and Mr. Cator claiming a casting vote,

Right of Election.

Making freemen.

* Here, and again also in the same year, only one bailiff is spoken of, though the bailiffs are mentioned in the plural number throughout the charter of Edward IV. In the Ludlow case, 1597, it was made a serious ground of complaint against the bailiffs, that they had not demanded the precept in the plural, but in the singular number—*bailiff*.

† The term "*freemen*" properly means the *liberi homines*:—that is, the *burgesses* of the borough.

‡ It does not appear to how long a period this word "formerly" is applicable:—no doubt the introduction of the practice was long after the charter of Edward IV.:—in all probability during the reign of Henry VIII. or Queen Mary.

Edw. IV. he ordered the town clerk to swear them. It appeared that it was usual when there were not sufficient freemen for the service of the town, to make new freemen:—and that only
Resolution. freemen were returned on juries. The committee resolved, that “these freemen were not duly and legally made;” seated the petitioner:—and ordered the mayor into the custody of the serjeant-at-arms.*

With respect to these extracts from the Journals, it should
Burgesses. be observed, that as the charters only speak of *burgesses*, and the early returns were no doubt by them, if the right
Freemen. was truly found to be in the *freemen* as here stated, those freemen must have been the *burgesses*: which indeed appears to have been the fact; as there is a petition in 1699, of the “*free burgesses*,” a term affording a ready explanation to both the appellations, by showing them to be synonymous, and to be both included in the word “*free burgess*.” And this is altogether consistent with the early history of other boroughs, by which it has been seen, that anciently the bur-
Liberi homines. gesses were called “*liberi homines* ;” who, however, were totally different from the class of persons now *elected* in most corporations by the magistrates or common council, and improperly called *freemen*. The ancient “*liberi homines*” or “*burgesses*”
Court leet. were *presented* at the *court leet*. And as the general jurisdiction of that court was taken away by the statute of Edward IV., perhaps the magistrates, (who were in many boroughs enabled to hold the sessions,) might in this gradually have assumed to themselves the right of *electing* the freemen. This however was a manifest usurpation: and cannot be placed in a more objectionable view than by considering the unconstitutional anomaly, that the jury should be returned out of the freemen, whom the magistrates are said to have had the power of electing; and so might confine the number to any the smallest above 12. The effect of which would be, that there might be only 12 freemen :†—all of whom must consequently be upon the pannel, producing a standing jury

* This seems to have produced some sensation in the country, as the Mayor of Chester appears to have been deterred from making freemen, by the dread of this example. See Chester case, 1690, 10th Journ. p. 357.

† The fact is so at Bossiney, in Cornwall.

without the possibility of challenge by any person, who ^{Edw. IV.} under the full jurisdiction given to the mayor, bailiffs and burgesses by the charter of Edward IV., might be compelled to sue in their court. An evil nearly approaching to this, seems to have actually arisen afterwards in this borough. For in the proceedings upon the petition in 1701, it appears that there had been two cases for trial at the sessions; and two juries being wanted, it was said there were not freemen sufficient to form them. The judge therefore, from necessity, directed some more freemen to be made, a thing totally out of his province to order; but the necessity for doing so, is sufficient proof of the state into which the borough was brought by this absurd and anomalous usage, —to say nothing of the obvious want of any legal origin for a custom which confined the juries to such freemen as these,— particularly as at the same time it is impossible not to be satisfied that the juries were originally taken only out of the ancient *liberi homines*, or *burgesses*, for whom these modern freemen were substituted. Indeed it will be seen, from the subsequent extracts from the Journals, that the usage contended for on this point is placed upon so many different grounds, that it carries along with it the clearest marks of innovation, and cannot be supported as a legal custom.

Long subsequent to the charter of James I., we find a ^{1694.} ^{5 Will. III.} *disfranchisement* by the *whole commonalty*, and not by a select body.

There was, in this year, another petition; but being resumed in the next session, in a different form, it was dismissed.

In the tenth year of William III., upon the death of one ^{1698.} ^{10 Will. III.} of the members, there was a new election for the borough: and a petition by the sheriff of the county followed upon it, which speaks of the election having been made by the *burgesses* and *freemen*; who these were, whether the same ^{Burgesses.} ^{Freemen.} persons, or two different classes, does not appear.

The petition of one of the candidates stated, that he was elected by all the "*capital burgesses*" but one, and most of ^{Capital} ^{burgesses.} the rightful *freemen*; and that the other candidate was

Edw. IV. elected by the other capital burgess, and other persons who had no right to vote.

There was another petition of all the magistrates but one—all the common council—and the greater number of *free burgesses*—suggesting an ancient usage for the magistrate, or the first 12 masters, or the greater number of them, with the Freemen. mayor, to make *freemen*; and it is there added, that this was declared to be the right of the magistrates or masters, by the vote of the House of Commons in 1689, which, a mere inspection of the Journal will show to be inaccurate, as no such vote passed. It is true, the right of making freemen by somebody seems then not to have been denied. But it should be observed, that in that case it was unnecessary to deny the right generally, because, in the particular instance, it was clear at all events, that the right had been unduly exercised; and it surely is carrying a negative decision in a particular case too far to say, that it is an affirmative decision as to cases in which the particular ground of that decision did not exist.

This very petition shows itself the unworthy purposes for which these usurped usages were attempted to be supported; as it appears that one of the parties to them had done it to get himself, and any person whom he pleased, returned as a parliamentary man.

^{1698.}
^{10 WILL. III.} The petition of another candidate stated, that he was Freemen. elected by the old indisputable *freemen*.

Another petition, by the magistrates, common council, and Free burgesses. free burgesses, was also presented.

Report. The report of the committee states the election to have been made by the *burgesses*; and that the election of one of the candidates was said to be by several of the *burgesses*, and the other by several of the magistrates and *free burgesses*:—and neither candidate was held to be duly elected, but the election was reported void.

^{1699.}
^{11 WILL. III.} In an action for a false return to a mandamus, it was alleged, that King Edward III., granted to the burgesses of Dartmouth, a charter to elect a mayor, *de seipsis*, annually; and by constitutions made in the reign of Queen Elizabeth and

King James I., and long usage made in pursuance thereof, Edw. IV. the method was, for the common council to propose two persons, and for the freemen to choose one out of them. That thus it continued till 1641, when a bye-law was made for the repealing all former bye-laws; and ordaining, that for the future, elections should be made by the *freemen at large*; Freemen at large. and, accordingly, the two succeeding elections were so made. In the year 1684, the old charter was surrendered: but the surrender was never enrolled: and a new charter was granted, under which the town made a bye-law, repealing the bye-law made in 1681. The court resolved, first, that though by the grant of Edward III., the election was to be by the freemen at large; yet this might be restrained and regulated by usage and bye-laws, to the choice of one out of two only. Secondly, that the bye-law in 1681 had well restored the ancient and primitive constitution, and repealed those bye-laws that altered it. Thirdly, that the surrender of the old charter was void for want of an enrolment. Void Charter. Fourthly, as to the new charter and bye-laws made under it, the court held, that if those that were members under the old charter happened to be the only persons that acted, they should be deemed to act by virtue of their ancient and true right; but if commixt with others that were only members under the new charter, though the old members were the majority, yet they must be taken to act by virtue of the new charter, and then what they did was void.*

There was also a mandamus at this time to admit certain persons who claimed as apprentices and sons of freemen. 1700. 12 WILL.III. Apprentices. Sons. And about this period the word "elected," upon which we have before commented, was generally applied to the admission of freemen.

For the select body of the common council, whom we have seen gradually assuming the power to themselves of "electing" the burgesses, at this time openly insisted upon their right: and, in defiance of the law, charters, and documents we have before quoted, made an ordinance, stating that the ancient and undoubted right of making freemen, was in

* Salk. 190, Butler v. Palmer, S. C. 12 Mod. 247.

Edw. IV. the mayor and major part of the masters or magistrates of the borough.

1701.
13 Will. III.

In this year there was another petition, against the return of the members for this borough.* It appears there was much question respecting the returning officer, and who was the proper mayor. As to the poll the petitioner objected to 14 voters, as made free without a competent number of the chamber; there being only the mayor present and five others, two of whom went away before they were made free, so that there were only the mayor and three magistrates present, whereas it was generally thought, that the mayor and six magistrates are necessary to make freemen, and the usage was found to be so from 1671. It was said, that at the same time some eldest sons of freemen demanded their freedom, and were denied by the mayor. One person proved, that he had been made free, *and should not have been so if he had not promised to vote for one of the candidates.* The mayor was proved to have said of one of the proposed candidates, "that they would make freemen enough to keep him out."

Honorary
freemen.

The order stated before, of 1558, was read, and also that of 1672. Two were objected to as *honorary freemen*, because the oath is different from that of a trading freeman,† the latter obliging them to perform the duties of the corporation, which is not so in the former.

Sons of
freemen.
Appren-
tices.

Some were objected to as having been made free on pretence of being *sons of freemen*, or having served *apprenticeships*; and four as made by several mayors on claim of a right of every mayor of himself to make one freeman in his mayoralty.

A mandamus was referred to as suggesting a custom, that such as were *eldest sons of freemen*, or had *served seven years apprenticeship* to freemen, had right to their freedom, which was denied by several of the chamber. The inconveniences alluded to before of the juries, being confined to the freemen, whose number were so small, were mentioned:—And it

* 13 Journ. 580.

† Stated also to be so at Lyme, on petition in 1689; see 10th Journ. p. 140.

is said that there was a want of freemen to serve on juries at certain trials: And that the judge had ordered the mayor to admit freemen, which was done immediately. One witness proved that for 40 years the usual custom of making men free, was by the mayor, and major part of the magistrates who appeared; and he added, that the practice of the mayor's freeman was grounded on this, that "*the mayoress would choose an able man, and by the consent of the magistrates, he was made free.*" A practice so absurd, as to negative all probability of its having had a legal commencement—taking away all weight from the evidence.

Edw. IV.
Mayor's
freeman.

In answer to the objections which were made to the eldest sons of freemen, and those who had served apprenticeships, the counsel for the petitioners put the matter on a ground which shows what the real nature of this supposed right was:—they did not found it upon any charter granted to this place, or any particular custom or usage applicable to this borough, but upon the general law of the land, contending, that "by the law of England, the eldest sons of freemen, and those who served apprenticeships, were entitled to their freedom." How the supposed right of primogeniture was introduced, as well as upon what ground the claim of the apprentices was founded, we have elsewhere shown.—Instances of the admission of both these sorts of freemen, upon the payment of small sums, were proved on the petition, as well as of the mayor's freemen—one for each mayor:—but none since 1672.—The sitting members were confirmed in their seats.

Members
confirmed.

At this time the select body and the corporation seem to have carried their usurpations to the greatest and most open extent: for the mayor, aldermen, and magistrates made a bye-law, by which they took to themselves the sole right of making freemen.

1706.
4 Anne.

The account of this place given by Browne Willis ought to have been accurate and perfect. For he informs us in his preface to the second volume, that "he had derived great assistance in his work from Mr. Michael Peach of Dartmouth:—particularly with respect to that borough. And

1716.
14 Anne.
Willis.

Edw. IV. that he also communicated to him much respecting other boroughs in that county—as well as in Cornwall,—extending to the better half of the boroughs in Devonshire, and three or four in the latter county.”

Willis says,* that “ at this time the town and bar of Dartmouth belonged to the corporation, which consisted of a mayor, recorder, 12 masters or magistrates. The mayor, with the majority of masters or magistrates, having power to make freemen and *elect* officers, viz., two bailiffs, a town clerk, and high steward.—They keep a court of session, and a water bailiffwick court, by virtue of a lease of three lives from the duchy of Cornwall, for which they pay a head or chief rent of about 14*l.* per annum.”

“ The choice of members of Parliament, is,” he says, “ in the *freemen*, 78 in number, created by the mayor and magistrates.”

In the oath of a freeman for this place, it is provided, as we have seen in many others, that “ he should contribute to “ all rates and payments for the welfare, good, power, and “ support of the corporation, the mayor and his brethren.”

1763.
3 Geo. III. The term “ alderman” appears for the first time in the books, in the beginning of the reign of George III., and was totally unknown to the ancient records and charters of the town.

1793.
33 Geo. III. In 1793, a petition was presented by Mr. Scale against the return of Mr. Bastard, and the right honourable John Charles Villicot.†—The committee reported, that the merits of the petition having in part depended upon the right of election, they had required from the parties statements of the right.

Statements
of the
rights. That for the petitioner, was,
Inhabitants That the right was in the *inhabitants* of the borough,
Southtown being a part of it.

That for the sitting member, was,
Freemen. That the right was in the *freemen* of the borough.
Resolution. The committee negatived the right stated by the petitioner, and affirmed that stated by the sitting member ; and reported the petition frivolous and vexatious.

* 2 Bro. Willis, 367.

† Jour. 48, p. 211, 281.

The Journal contains no other information as to this pe- Edw. IV.
tition.

It seems that the statement of the petitioner, that the right was in the "*inhabitants*" was too large; and probably the committee were correct in deciding against that right so stated. Because in all boroughs the comprehensive word "*inhabitants*" has some qualification; and should have had some limit in this.

The committee, in 1689, having decided that the right was in the *freemen*, the petitioner in this case should have endeavoured to have reconciled his statement with that decision, and for that purpose have adopted the term "*freemen*," and have shown that they meant "*burgesses*," that is, the *inhabitants paying scot and lot*: and the early history of the borough would have supported that explanation:—it was clear the word "*freeman*" was substituted for "*burgess*,"—and it was a fair and cogent observation to contend, that in 1689, both parties stood upon an election by the then freemen, and that the committee was not called upon at that time to say who the freemen were, but they took the right, as it was stated to them on both sides, to be in the freemen.

Whether the case, in 1793, was put upon these grounds or 1793.
not, can only be ascertained by referring to the minutes of the evidence on that occasion, and the arguments urged by counsel.

It appears that Mr. Gibbs, who was counsel for the sitting member, in his summing-up contended, that it was not only a "*borough by prescription*," but also a "*corporation by pre-* Corpora-
tion by pre-
scription.
scription;" a fact we have most distinctly disproved by the documents before cited. And as the case must have principally turned upon that position, the committee were probably misled by that uncontradicted assertion:—Mr. Gibbs also relied upon Dr. Brady, the merits of whose work have been already canvassed. He also relied upon many of the cases to which we have before alluded, where, upon the unfounded doctrines of Dr. Brady, decisions had been made in favour of the *corporate freemen*, contrary to the clear evidence adduced before the committee, as in the cases of Lyme and Poole. Mr. Gibbs also asserted, in order to support the rights of

Edw. IV. selection in the common council, that the body who had the power of making bye-laws, was the "governing body;"—words which undoubtedly sound largely, but which either mean little, or are untrue. If, by the governing body, is meant no more than the body which had the power of making bye-laws, then it is a simple truism, and carries it no further than the charter itself:—but if it is meant to assert by those words, that those who have the power of making bye-laws, have any further special power as the governing body in the corporation, then it is untrue; for no point in law is more clear—than that if the king by his charter creates a select body with any special power, as that of making bye-laws, or otherwise, their authority is strictly limited to that special power, and cannot go beyond it.

On the contrary, if the body having the power of making bye-laws, is not created by the charter, but by the burgesses amongst themselves, then such body has a bare delegated authority, liable at any time to be determined by those who created it, and the description of the "governing body of the town" can in no sense be applied to it.

Case of the Butchers' Company. Mr. Gibbs cited as an authority for his position, the case of the Butchers' Company against Morey, 1 Hen. Black., 370; in which case, the power was expressly granted to the company, of making bye-laws for the government of the trade; and it certainly is not a case coming within the same rules as municipal charters; and the power was there given to the whole company, and not to any select part of it.

When made a borough. The general result arising from all the documents stated above, is, that Dartmouth was, in all probability, made a *borough* subsequently to the compilation of Domesday, in the reign of William the Conqueror, and before the end of the reign of Edward I.:—because it is not mentioned as a borough in Domesday, and it returned members in the 26th of Edward I. There is reason to think it was made so after the 6th of King John, because in that year its quinzime was paid: and in the Milborne Port case, in 1628, it is said, in the report of the committee, that boroughs paid tenths and not fifteenths. Any charter, therefore, creating this place a

borough, must have been in the period between the sixth Edw. IV. year of King John, and the 26th of Edward I.:—an interval of 93 years. And if this borough was purchased by Edward I., the question would be, whether, at the time of his purchase it was called a borough; if it was not, the probability would be, that it was made a borough by that king, shortly after his purchase; if any charter of that date could be discovered, it would throw considerable light on the early constitution of this borough,—but none such is to be found.

The right of voting is reported by the committee, in 1689, to be in the *freemen*; and the committee of 1793 adopt the Freemen. statement of the sitting members, which states the right precisely in the same manner. Under the statute of the 2nd George II., the right therefore must, before the reform act, have been taken to be in the freemen, which, according to the manner we have explained that term, must have meant *the inhabitant householders paying scot and lot*. That it is capable of that explanation is most clear, because the term "*liberi homines*" occurs so frequently in our ancient laws and statutes, as descriptive of the "*freemen*" under the common law, and not, as now supposed, of the members of a corporation. That this is the proper explanation of the word *freeman*, is shown also by the history of boroughs in general, and of this place in particular. And there can be no doubt, that anciently, the *burgesses* were the *free inhabitants*, or "*liberi homines*," within the borough, who having done their suit at the court leet, by giving their pledges there, and by being sworn to the king and the borough, were thereupon duly *enrolled* at the court: and consequently, became liable to scot and lot—the wages of the members to Parliament—and all the other burdens of the borough. And such *burgesses* were, no doubt, the persons who made the return for this borough in the 26th Edward I.—the 14th Edward III.—and in the subsequent reigns:—as well as the persons to whom the charters of Edward III.—Richard II.,—and Edward IV.—were granted. It is impossible not to draw the conclusion from the last charter, that the *burgesses* who then

Liberi homines.

Edw. IV. existed in the old borough, and those who were added to
 Inhabi- them from the new borough, were the *inhabitants*; and of
 tants. the description mentioned above, namely,—the sworn and
 enrolled householders who paid scot and lot; particularly as
 a view of frankpledge is one of the privileges granted by that
 charter. It was probably in this, or the next succeeding
 reigns, that the admission of freemen into the privileges of
 the borough, by the head officers of the borough, com-
 menced. It should be remembered also, that it was in this
 reign that the statute passed, directing the indictments found
 Leets. in the leet, to be referred to the sessions; which, in effect,
 brought much of the jurisdiction of the leet into disuse, and
 must have materially affected the jurisdiction of the bo-
 roughs. In the succeeding reigns, therefore, charters to
 boroughs, incorporating them, and giving the present corpo-
 rate constitutions, were frequently granted:—one power
 Justices. usually given, being that of having their own justices of the
 peace, and sessions. Ordinarily there was added a common
 council. As the charter of the 2nd of Henry VIII., in 1511,
 speaks of the mayor, bailiffs, and burgesses; and the consti-
 tution made in the fifth year of the reign of Queen Mary,
 Common 1558, first mentions the *common council*, it was, in all pro-
 council. bability, by some charter granted in the interval between
 these dates—being a period of 47 years—that the common
 council was created, who afterwards exercised the right of
 making freemen. Whether any such charter gave them
 that power, or they assumed it, is quite indifferent to this
 question:—because, in neither case could it affect the right
 Right of of voting.—For the charter of the crown has no effect on
 voting. that right, according to the Chippenham case,* in Glan-
 ville's reports, and the doctrine laid down in the second
 Institute. Nor could the burgesses by any bye-law make
 regulations to affect the right of election, as appears by the
 Dover case,* also in Glanville's reports: although such bye-
 laws might be binding as to their own corporate concerns.
 The conclusion from which is—that although such freemen
 so made by the common council, might have all the privileges

* See Glanville, pp. 47 and 63.

of the corporation annexed to their situation of corporate freemen, they *would not have the right of election, with respect to which the whole system was a usurpation.* Edw. IV.

Such is the history of Dartmouth, from the full elucidation of which, afforded by the numerous documents we have quoted, the reader will see the gradual progress of perversion and usurpation in the borough; and the confusion, uncertainty, and intricacy, produced by those means; particularly with respect to the freemen, and the power of swearing and enrolling them.

We have only to hope, that the documents relative to this place, and the authorities of all kinds which we have quoted, will serve to enable the reader to unravel this intricate maze, and to arrive at a sound conclusion, not only with respect to the history of Dartmouth, but also generally of the other boroughs.

Edward IV., in the fourth year of his reign,* gave orders, by letters patent under his great seal, touching the manner of electing the mayor of *York* yearly; directing that all the searchers of every mystery within the liberty and city should be summoned, and that all artificers of mysteries should personally appear in the guildhall of the city. York.
1464.

Mayor.
Mysteries.

But the letters patent neither refer to, nor give, any corporate powers.

Dunwich received at this period a charter of confirmation, with a few additional privileges, but none of incorporation.† Dunwich.
1465.

This king also recites in a charter,‡ that he had been informed, on the behalf of the now *burgesses, tenants, resiants, and inhabitants* of the town of *Doncaster*, in the county of *York*, that for a long time they had had and enjoyed certain free liberties and customs; and the burgesses, &c., fearing that they, of these liberties and free customs, by a defect in a specification of the same, and upon other emergencies, in process of time, might be molested, aggrieved, obstructed, and incommoded, most humbly besought the king Doncaster.
1467.

* Rym. Fœd. tom. xi. p. 529. Mad. Fir. Bur. p. 33.

† Rot. Cart. n. 7.

‡ Rot. Cart. 5 Edw. IV. n. 2.

Edw. IV. that he would graciously condescend, the aforesaid liberties
 Doncaster. and free customs, in declarative and express terms, to the
 Incorpor- same *burgesses, tenants, resiants, and inhabitants*, and to
 rate their *heirs* and successors, to grant; and to incorporate them,
 and make them persons fit and capable, with perpetual suc-
 cession, &c.

The king, listening to their supplication, granted, that the
 town of Doncaster should be a *free borough*; and that the
burgesses, tenants, resiants, and inhabitants of the same, and
 Burgesses. their *heirs* and successors, should be *free burgesses*. That
 they might have a guild-merchant; and might enjoy the
 same liberties and free customs in the same borough, as they
 and their predecessors had theretofore reasonably used and
 One com- enjoyed. And that they, from thenceforth, should be in
 munity. reality and name, one body, and one perpetual community.
 That the same community, every year, in a certain place
 within the borough, might at their pleasure, choose out
 Mayor. of themselves one fit person for mayor, and two others for
 serjeants-at-mace of the town, and in the town *dwelling*, to
 rule and govern the community aforesaid for ever.

Cinque The king, after confirming all previous charters and liber-
 Ports. ties, granted to the mayors, bailiffs, and jurats, of every port,
 1465. and member of the ports,* by the *commons* of the same
 elected, and for the common profit of the *barons, good men*,
 Inhabi- and *inhabitants*, that they might record their liberties and
 tants. free customs before the king's justices and ministers. That
 the *barons, good men* of the Cinque Ports, their *heirs* and
 Resident. successors, and whosoever were *resident* within the ports, and
 members contributing to the service and shipping, should be
 quit for ever of toll, murage, and *scot*—*suits of counties* and
hundreds—and lathes of hundreds—*views of frankpledge*—
 and of monies appertaining thereto, &c. And for the main-
 tenance of the shipping and service, every mayor and jurats
 in every port—and member of the ports—and members where
 a mayor and jurats are—and every bailiff and jurat in every
 port—and member of the same ports—and members where
 such bailiff, by the *commons* of such port, is elected—and

* Rot. Cart. 5 Edw. IV. n. 23.

also the jurats in every port and member, where neither Edw. IV.
 mayor nor bailiff, by the *commons* of such port or member, is elected—and their successors for ever, might have all manner of fines, &c., of all the barons, and other *resiants*; and that they, the *barons* and *good men*, might for ever have *leets* and *law-days* of *residents* within their liberty, &c. Jurisdiction is also given them over personal pleas, &c.

This charter to the Cinque Ports contains no words of incorporation, notwithstanding they were places at that time undoubtedly of great importance.

Upon the other hand, the borough of *Bridgwater* received Bridgwater
 a charter of incorporation, in the 10th year of this reign;* the provisions of which, and the privileges granted by it, are, in effect, the same as those of the previous charters, and do not require repetition.

WENLOCK.

Wenlock received, in this reign, a peculiar charter, containing a clause which, apparently, granted the privilege of returning members to Parliament. As introductory to this document, we shall give a few of the early records, illustrative of the ancient history of this place.

In the Saxon æra, Wenlock† was celebrated as a religious establishment; and the sacred virgin, Milburga, the daughter Abbess.
 of King Merwald, and niece of Wolphere, King of Mercia, presided there as abbess.

Wenlock is not mentioned as a borough in Domesday; it Domesday
 is entered as part of the lands of the church of Milburg, in Patintune hundred; and there is nothing said of it, which is material to its municipal or parliamentary history.

There was a charter in the 20th of Edward I., to the prior 1291.
Prior.
 of Wenlock, of free warren in that and 13 other places.

In the 21st of Edward III., John Aaron Geytington, clerk, 1347.
 gave to the prior of Wenlock one messuage and one virgate of land in Little Wenlock.

* Rot. Cart. 10 Edw. IV. n. 8.

† The British name of Wenlock was "Llan Meilien," or "St. Milburgh's Church;" and in Dugdale's Monasticon, it is called "Winnica," or the "Windy place."

Edw. IV. From this period to the reign of Edward IV., no other

1468. material documents occur with respect to this place, nor is there any trace of its having been incorporated; but in the eighth year of this reign, a charter was granted. It is

Residents. expressly a grant to the *residents*. Wenlock appears not to have been a borough before the grant of this charter, as it is called the town of Wenlock:—and it is clear, from the general wording of this document, that the *burgesses*, according to the ancient mode of expression, were “*the men of the borough*,”—or the persons *of*, or belonging to it: because the power to elect the first bailiff, is to elect one from themselves,—that is, the *burgesses*:—and the clause for the future election of a bailiff, is to elect one from the more honest and more *fit persons of the borough*.

The charter itself recites,* that it was granted at the request of Sir John Wenlock, Knt., Lord Wenlock, and in Residents. consideration of the services of the liege men and *residents* in the town of Wenlock; and the king being willing to confer his grace upon the same *men* and *residents*, granted to Men. the *men* and *residents*, that the town should be incorporate, of Incorporate. one bailiff, and the *burgesses* and *commonalty* of the borough, and that they, the *burgesses*, should be called and named, “the *Burgesses of the borough of Wenlock*.”

The name of incorporation is here only “*burgesses*,” which shows that the “*liege men*,” “*residents*,” and “*commonalty*,” are only synonymous terms for “*burgess*,” and included in it.

Power is given to the *burgesses* to elect and choose, from Bailiff. amongst themselves, one bailiff, for the government of the same town, who is duly to take his oath of office. And the clause describing those who are to be eligible as bailiffs, mentions them as “the most honest and fit persons,”—using that as the description of the person who is, according to the charter, to be the bailiff elected, “*de seipsis*,”—that is, one of the liege men, residents, or commonalty. In the clause describing the limits, the town or borough are used as synonymous.

* Mad. Fir. Bur. p. 29.

A merchant guild is granted, and the usual privileges Edw. IV.
and exemptions, as before mentioned, particularly as to Merchant.
purveyance: from whence an inference has been drawn, Guild.
that this was a borough by prescription:—but it might
have had privileges without being a borough or cor-
poration, and those privileges might have been acquired
subsequent to the first exercise of the parliamentary fran-
chise, in the reigns of John, Henry III., or Edward I.

As the burgesses residing in the borough are mentioned,
an inference might be suggested, that some of the bur-
gesses might be non-resident:—but taking the whole char-
ter together, it is evident it could not be so; because the
grant is to the *residents*; and the burgesses are throughout Residents.
mentioned as synonymous with that term.

The charter also grants to the *men* and *residents*, and *bur-*
gesses, their *heirs*, &c., that all the *men*, *inhabiting or to*
inhabit within the aforesaid town, &c., shall be *at scot and* Scot and
lot with them, the burgesses, in aids, talliages, and taxations lot.
whatsoever.

It also provides for a weekly court—and that the bailiffs
should be justices—and that there should be a recorder or Justices.
steward. The county justices not intermeddling.

To these privileges are added, the assise of bread; return
of writs, summons, estreats, precepts of the Exchequer, &c.;
and the extracts and precepts of the justices itinerant. And
it is provided that, no sheriff, bailiff, or other minister of
the king, shall enter the town, the parish, and precinct, to Non-intro-
do any thing belonging to his office, unless in default of mittant.
the bailiff.

After which follows the important clause, that the bur- Parliament.
gesses may elect, out of themselves or others, one burgess
for the borough, for Parliament, who shall be received and
incorporated in Parliament like other burgesses.

And that the same *burgesses* of the town aforesaid, shall
not contribute to the expence of knights for the county of
Salop in any manner.

It should in conclusion be observed, that in this charter
there is no grant of a view of frankpledge, as there is in the

Edw. IV. London charter of the same reign. And the reader cannot fail to note the singular use of the word "incorporated," as applied to the representative in Parliament:—and the express exemption of the burgesses from the payment of the wages for the knight of the shire: which was probably expressly introduced, as it was a newly created parliamentary borough.

1627.
3 Cha. I. Charles I. granted a confirmation of this and other charters, in the third year of his reign, to the two bailiffs, 20 aldermen, and 48 common councilmen.

1710.
7 Anne. In the seventh year of the reign of Queen Anne,* a petition of several burgesses, *residing* and *inhabiting* within the parish of Wenlock, complaining that all the burgesses *inhabiting* and *residing* within that parish had the sole right to vote; but in violence of their rights, many hundreds, who were
Non-resi- *non-resident*, were made burgesses, and admitted to poll.
dents. Upon this petition there was no report—nor does it appear
1722. that the right of election for this place was ever determined, although, in point of fact, it has been exercised by the members of the corporation, under the general name of burgesses.

Bewdley.
1472. The king also, at the humble supplication of the burgesses and inhabitants of the town of *Bewdley*,† granted that the town, with the precincts of the same, for ever should be a *free borough*;‡ and the *burgesses* of the same town, and precincts of the same, should for ever be *corporate*; and that the same burgesses, and their successors, burgesses of the town,
Corporate. should be corporate, and be one perpetual community, in
Name. body, deed, and name, by the name of "the Burgesses of the town of Bewdley, and precincts of the same;" that they might have perpetual succession, and a common seal;
Capable. and be persons fit and capable in law; and that they and their successors, might be able to take lands, tenements, &c.; that every one of the aforesaid burgesses for the time being, should be released, through all the kingdom of

* 3 Willis, p. 42.

† Harl. MS. 464, p. 184 B.

‡ 1 Pet. MS. 78.

England, in toll, pontage, &c., and of all other customs, for ^{Edw. IV.} all their goods and merchandises, in every place within ^{Bewdley.} the kingdom:—any statute, act, or order to the contrary, or any other thing, notwithstanding.

In an inspeximus of a record of the council in the office of the privy seal,* a judgment appears to have been given by the chancellor and judges upon the part of the abbot of St. Edmund's against Thurston, and others *inhabiting* the town. Bury.
1480.

The abbot produced charters of Edmund, Canute, Hardicanute, Edward the Confessor, and other kings of England, with other records. The *inhabitants* produced no records: but alleged a prescriptive custom, that the alderman should depute and ordain the constables, keeper of the market, and watch. But judgment was awarded, "that the abbot of the said monastery is lord of the town of Bury:—that no alderman, constable, gaoler, keeper of markets or fairs, nor any other officer, could or ought to be in the same town, except by the permission of the abbot; and that the alderman should not intromit—and that the men *inhabiting* the town should not have an incorporated community—nor a common seal; and that they had not the powers or rights of an incorporated community—nor had they any head or captain, except the abbot, their lord; and that the men *inhabiting* were excluded from the exception of prescription of time and use. That the abbot had all pleas of the crown, and every thing belonging to them—and the right of making the aldermen and all other officers." Not incor-
porated.

Bury has always been treated as a corporation, and has, like other places, been alleged to be so by prescription. It also had many privileges like other boroughs, particularly an alderman—probably from the Saxon times, like the borough of Calne—and yet we have it established by this document, and the decision of the council with the assistance of the chancellor and judges, that it was not a corporation:—and it is the more striking that this fact occurs in this reign, when, as we have shown, incorporations were gradually becoming general.

* Rot. Pat. p. 20, m. 26. 1 Pet. MS. 65 B.

EVESHAM.

1482. A writing indented of this date recites,* that the bailiff of *Evesham* had sustained great loss in gathering the rents, amercements, and profits, growing at Michaelmas, in consequence of the new bailiffs being chosen at Michaelmas, whereby the old bailiffs could not so well gather the profits at that time due, with which, nevertheless, they were always accustomed to be charged : for removing of which evils it was finally concluded for ever, by the assistance as well of the abbot of the monastery, the prior, the kichener, the *steward* of the courts of the monastery, the two new bailiffs, and the two old bailiffs, and eighteen other persons by name, that the then bailiffs should collect all the rents due at the last Michaelmas ; and all amercements, pains, forfeits and profits, growing and coming of the last *law-day*, holden at Evesham, the Friday before Michaelmas-day, as they appear by the extracts thereof, made and delivered to the new bailiffs ; and to continue the kichener thereof, and discharge the old bailiffs therefrom ; and that the new bailiffs, to be chosen at the next Michaelmas, should collect the rents, &c. which would become due at that time—any other use, custom, &c. to the contrary notwithstanding ; the bailiffs of Evesham yearly paying to the kichener of the monastery 20 marks. And that the old bailiffs, yearly for ever, at Michaelmas law-days, should find brad, cheese, and ale, competent and convenient to the cellerer, *steward*, and *jury*, to eat and drink like as aforetime hath been used, when the old bailiffs had the gathering, levying, receipt, and charge of the said rents, amercements, pains, forfeitures, and other profits ; and in likewise so continue for ever. In witness whereof to one part, remaining with the bailiffs and their successors for ever, the said abbot, prior, kichener, and *steward*, have set their seals ; and to the other part, remaining with the said abbot and his successors for ever, the said now bailiffs, in the name of the *inhabitants* and all others of the said town, have set their seal of office of bailiffs, and the

Law-day.

Steward.
Jury.

* Cart. Ant Aug. Off. Y. 43.

bailiffs of the last year, and the 18 other persons before Edw. IV. mentioned.

From this document it appears, beyond all controversy, that there was a law-day or court leet held within Evesham at this time; and had been so for many years before: as is shown by the frequent expressions in the deed referring to the former usage, in terms which evidently import antiquity.—It is also clear, that although the monastery received some part of the profits of the court, the remainder was received by the bailiffs for the *inhabitants*; and it is singular that Evesham, although an ecclesiastical possession, should not have been incorporated, like the many other places we have previously cited.

KINGSTON-UPON-THAMES.

Edward IV., in the 20th year of his reign, after inspecting and confirming all the previous charters which the town of *Kingston-upon-Thames* had received—and reciting how much the *inhabitants* had lost by the payment of the fee-farm, and by the inundations of the waters, and that the men and their successors should enjoy all the premises, without ambiguity as to grants contained in previous charters, granted to the freemen; that they should be one body in deed and name—and one perpetual corporation of two bailiffs and freemen; that they should have perpetual succession—and by the name of “the bailiffs and freemen of the town of Kingston-upon-Thames, in the county of Surrey,” plead and be impleaded—purchase lands in fee and perpetuity—have a common seal—and make ordinances for the government of the town.

1480.

Men.

Freemen.
Corporation.

That the bailiffs and men, their *heirs* and successors, should have, within the town, all forfeitures of lands, &c. of felons, &c.; and all kinds of amercements; and no escheator, or clerk of the market, should enter within the town.

TRURO.

The borough of *Truro* appears, in the reign of Edward IV., to have been in the hands of the crown, as this king

1472.

Edw. IV. granted this honor, borough, manor, and hundred, after the decease of Katharine Mowbray, Duchess of Norfolk, to his brother George, Duke of Clarence; and in this same reign there is a return of members of Parliament for this borough by the mayor and his *co-burgesses*.

1477.
Return.
Common-
alty. In the 17th year of the same reign, the return is by "the mayor and *commonalty* of the borough for the *commonalty*."

How these and the preceding returns for Truro can, by any possible construction or interpretation, be confined to the select body, as the elections have been in modern times, it is impossible to conceive.—The proper construction would obviously be, to consider the "*co-burgesses*" and the "*commonalty*" to mean the same persons; because there is no reason for assuming that the body, returning the members, had been altered;—nor is there any charter or document to raise any supposition of that kind. And if *co-burgesses* and *commonalty* meant the same, which is apparent, then these returns were, as we have shown before, made by the *inhabitants*, who always enjoyed the rights of the place as *burgesses*.

WELLS.

Entries in the corporation books for the borough of *Wells* establish, that the *inhabitants* of that place were, like many others, described by the general name of "*men*;" as in the 41st year of this reign, an honest "*man*" is appointed to be a magistrate of the borough. And in the sixth year, there is an ordinance, that all *apprentices*, of either sex, to *burgesses*, after service of their time, should be admitted (of which there are many instances) *burgesses* of the town, and pay wine, "*pro ingressu habendo*;" and nothing more; for a fine, in the same manner as the sons of *burgesses*.

And there are many entries of persons being admitted as *burgesses*, because they were the *sons*, or had married the *daughters* of *burgesses*. But there is a restraint put upon the latter, that they shall not be taken into the liberty of the city, unless they tender themselves within a year after the marriage; which establishes, in conformity with the common law, that the admission into the liberty meant actual *resi-*

dence within the city; because, if the party came to reside Edw. IV. Residence. within the city for a year, he would, according to the principles to which we have before adverted, have been obliged to do his suit royal, by attending and giving his pledges, and being sworn and cnrolled, either at the sheriff's tourn, Tourn. Leet. or at the court leet of some other place.

Again, on the other hand, there are instances of persons being *expelled* from the liberty, "*expulsi de libertate*," for misconduct, and other reasons, which seems, from the form of the entries, clearly to mean an actual expulsion from the city. And there is an entry of a person received into his former state and privilege of burgess; which seems to be also an actual reception into the city upon his return to it.

And in 1483, there is an ordinance—in conformity with the writ and the statute of Henry V.—that no one should be elected a burgess to Parliament *who was not a sworn burgess living within the borough.* 1483.

HYTHE.

We find entries nearly resembling those of Wells in the corporation books of the borough of *Hythe*.

John Mayhew accounts in the common hall, on the 22nd day of January, before the *jurats*, on which day he was *sworn* as a *freeman* in right of his *wife*, the daughter of Martin Cole. And he agreed to pay 3s. 4d. for his trade of a carpenter, for four years. 1468. G. fol. 18 A. Husband.

Again, William Cole, son of Martin Cole, late of West-hethe, accounted, in the common hall, on the day aforesaid, before the *jurats*; on which day he was *sworn* as a freeman in right of the said Martin his *father*. Son.

Clement Olway accounted, in the common hall, on the 25th day of the month of January; on which day he was before the *jurats* admitted and received into the *freedom* of the town of Hethe, that he might enjoy the privileges thereof, and he was *sworn*. And he agreed to give for the purchase of the said freedom 5s.; and he agreed to pay 13d. for his *scot*. 1472. G. fol. 96 A. Scot.

Alexander Yong accounted, in the common hall, on the 1476. G. fol. 167 B.

Edw. IV. 18th day of January, and agreed to pay 2*d.* for 2,000 herrings bought and sold, &c.; on which day he was *sworn* to the lord the *king*, and to the *town*, as *free* in right of his *wife*.

1478.
G. fol. 193B.

William Spruce accounted, in the common hall, on the 18th day of January, &c.; on which day he was received into the *freedom* of the town, that he might enjoy the privileges thereof in right of his wife, and he was *sworn*, &c.

This last entry appears to refer directly to an actual reception, as an *inhabitant* within the borough. The payment towards the *scot* in the former entry also indicates the same; and the inference from the whole seems to be, that the *inhabitant householders paying scot and lot*, were *sworn* and *enrolled* before the jury, or “*jurati*,” in conformity with the principles and practice of the common law.

PASTON LETTERS.*

1472. We have before observed the interest taken in the reign of Henry VI., by the great men of that day, in the election of knights for the county of Norfolk, as shown by the Paston Letters.† We find indications to a similar effect in the same letters of this date; in one of which, Mr. J. Paston informs his brother, Sir John Paston, that “his desire of knight “of the shire was impossible, because John Mowbray, Duke “of Norfolk, and John de la Pole, Earl of Suffolk, were “agreed more than a fortnight before to have Sir Robert “Wyngfield and Sir Richard Harcourt;” and he adds, “that “when he was at Framlingham, where he had warned Sir “John’s friends to meet him, upon hearing the appointment “of the two other persons, he sent to desire them to tarry at “home; but still many of them went to Norwich, where their “costs were nine shillings and one penny half-penny, although “they only breakfasted there and departed.”

The letter proceeds to state, that “the writer had also sent “to Yarmouth, and they had promised Dr. Aleyn and John “Russe to be burgesses more than three weeks before. And “that a letter had been written to the bailiff of Maldon, to have

* Vide ante, p. 911.

† Vol. 2, pp. 103 and 107.

"Sir John a burgess there;" and it is added, that "if he should miss to be burgess of Maldon, and the lord chamberlain would wish it, he might be in another place: *there be a dozen towns in England that choose no burgess, which ought to do it*: he may be set in for one of those towns if he be friended." And the writer adds, "that Sir John should in nowise forget to get some goodly ring at the price of 20s., or some pretty flower of the same price and not under, to give to Jane Rodon, for she hath been the most special labourer in your matter, and hath promised her goodwill in future, and she doth all with her mistress;* and if my lord chamberlain will, he may cause my Lord of Norfolk to come up sooner to Parliament than he should do, and then he may appoint with him for you, &c."

Edw. IV.

The suggestion in this letter, that there were other decayed boroughs which ought to send members to Parliament, but did not, and that the disappointed candidate might take refuge in one of them, was acted upon in the subsequent reigns, when Henry VIII., Edward VI., Queen Mary and Queen Elizabeth, restored many boroughs to the right of returning members, and would probably have continued to do so, had not a partial check been given to this course, by the inquiry instituted in the House of Commons in the fifth year of Queen Elizabeth, as we shall hereafter show in our extract from D'Ewes' Journal of that date:—notwithstanding which, however, from the reign of Henry VIII., to that of Charles II., no less than 200 members were added to the House of Commons.

Decayed boroughs.

There is also another letter in the Paston Collection,† from Sir John to his brother, informing him that at the request of Mrs. Jane Hassett and himself, the writer had laboured both the knights of the shire of Norfolk, and the knights of the shire of Suffolk:—adding that he understood there had been made labour that such a thing should have been as he wrote to him of, but that now it was safe.

1473.

* Elizabeth, Duchess of Norfolk.

† Paston Letters, vol. ii. p. 122.

NINTH YEAR BOOK.

Corpora-
tions.

We have seen that in this reign, grants of corporations were frequent : *—and the doctrine of corporations by implication became general ; thus it was assumed by the Courts in their decisions, that a grant of land to the burgesses, citizens and commonalty of any place, was sufficient to incorporate them by inference ; † the best authorities however appear to be opposed to that assumption :—which was in the earliest abridgments confined also to the mere position that they were to be considered as corporations, for the purpose of securing the payment of the fee-farm rent to the king, and not otherwise.

We shall however best ascertain the doctrines prevalent at this time as to corporations, by the extracts which will follow from the Year Books.

But before we proceed, it may not be improper to remark, that the æra in which these charters of incorporation were so generally introduced, can not be relied upon as the best period for satisfactory precedents, the times being so marked by turbulence and violence, and the acts of the king being by no means free from the charge of irregularity.

The manner in which Edward IV. spoke in his charters of the acts of his predecessor Henry IV., is one proof of this :—and as another, Lord Coke complains of the grant made by
1467. the king of the office of constable of England, in the 7th year of his reign, to Widwill, Earl of Rivers, and Lord of Grafton and De la Mote, for life, as irregular, and directly against the common law, and the statutes concerning the jurisdiction of that office. ‡

But to proceed with the Year Books.

1462.
Fol. 18 B,
M. T.
Westminster.

In an action of trespass for battery and imprisonment, against the abbot of *Westminster*, it was urged in justification, that the place where, &c., was within the precincts of the monastery of Westminster ; and that the monastery—and all their houses—and the soil within the precincts—was a sanc-

* Kyd, 62. † 7th Edward IV. ; 21st Edward IV. 56 ; 21st Edward IV. 57.

‡ 4 Inst. 127.

tuary for all manner of debts, trespasses and other things, Edw. IV.
 and likewise for felony and treason ; and that it had been so
 from time immemorial. And that every personal action made
 within it, had been sued before the commissioners of the
 abbot. It was said, in the course of the argument, that if a
 man be impleaded of land here, for land which he has in
 the city of *London*, he shall not answer, but he shall be im- London.
 pleaded before the hustings.

The relative situation of Westminster and London at this
 time, appears from this document : the former, preserving still
 its original charter of an ecclesiastical establishment, having
 ecclesiastical jurisdiction ; and as incident to it, the privilege
 of sanctuary : the latter having temporal jurisdiction, which
 is vindicated in the above case, against the claim of sanctuary
 set up by the abbot of Westminster.

In another case, a question was put to the court on behalf 1464.
Fol. 31,
M. T.
 of the justices of the peace, whether upon the new statute
 made in the then last Parliament, in which it was enacted
 amongst other things, that all inquisitions taken before the
 sheriffs in their *tourns* in the counties, &c., should be delivered Tourns.
 to the justices of the peace at the approaching sessions : for,
 notwithstanding the statute, the sheriff had taken inquisi-
 tions before him, upon the statute of liveries ; which ought
 to have been before the justices :—for the sheriff has not the
 power to inquire of these liveries given against the statute ;
 but only to inquire of things by the common law, or by ex-
 press statute :—but of assise of bread and ale, and of other
 common nuisances, the sheriff may inquire in his tourn, by
 the common law.

This case is material, as showing the doubts which soon Sessions.
 arose relative to the jurisdiction, taken from the tourns and
 leets, by the statute of the first Edward IV. ; and given to the
 sessions. Which appear to have produced contentions be-
 tween these two authorities :—ending in the ascendancy of
 the jurisdiction of the sessions, and the disparagement of the
 tourns and leets.

In an action of trespass, for assault, battery, and false Fol. 36,
M. T.

Edw. IV. imprisonment, the defendant pleaded, in justification of the trespass and assault, "that the *Tower of London* is in the *city of London* : that the king was seised of the same Tower : and from time immemorial a court had been held there. And that, by certain liberties and customs, they have holden pleas in the same court, of debt, trespass, and other actions for small or large sums. That the defendant, in the court of the Tower, sued a writ of debt against the plaintiff for a certain sum ; and the return was nihil. Upon which a *capias* was awarded, returnable before the steward of the same court ; and the defendant went with a bailiff to a parish within the liberty and franchises, and showed the plaintiff to the officer—upon which he was arrested, and a *cepi corpus* was returned, &c."

Tower of
London.

The extent and nature of the jurisdiction within the Tower of London, the reader will remember has been before a subject of remark, in our observations upon the Parliament Rolls ; where the Tower was assumed to be without the city of London ; and the mayor, when summoned to attend there, declared, before he entered within the precincts of the Tower, that he was no longer mayor of London—in order to prevent his attendance there from being drawn into precedent against his successors. In this case, the Tower is described as being *in the city of London*. It is difficult to reconcile these apparent discrepancies. But the documents are themselves interesting ; and the varying statements are probably sufficient to satisfy us, how readily these assertions vary, when it is necessary, for the interest of those who make them, to take a different view of the subject. The recital to the charter of Canterbury, in the reign of Henry VI., is a specimen of the inaccuracy of such statements ; and numerous misrepresentations of the same kind will be seen hereafter in the recitals of the charters of Queen Elizabeth.

1466.
Fol. 3.
M. T.
Steward.

In another case it was said, that "generally the steward of a court is the judge ; but in some cases, as in the hundred courts and courts baron, the suitors are the judges, and the bailiff and the sheriff are but as ministers. However, at a

fair, in the court of pie powder, the steward is the judge; Edw. IV.
for in that court there are no suitors. Where there are any,
they are the judges, and not the steward."

The distinction between the tourns, courts leet, and the
hundred courts, or courts baron, or others of a similar
description, is here distinctly marked; and the analogy
between the hundred courts and the courts baron, both of
which had civil jurisdiction, as contradistinguished from the Hundred
Courts.
royal and criminal jurisdiction of the tourns and leets, is
clearly established.

It was held in the Common Pleas, that if the king give
land in fee-farm to the *good men of the town of Dale*, that
the *corporation* is good. And so it is where it is given to the
burgesses, citizens, and commonalty. They, by such names
of *incorporation*, can have an action of things touching their Corpora-
tions.
farm, &c.; and the writ shall be to the men of the town of
Dale, or the citizens, &c. It was added, that one of a
commonalty cannot justify the distraining for rent due to
the commonalty; for it is a body, and no single person of
them can justify, but the whole as a commonalty.

From this case it appears first, that these grants of *incor-
poration* were given to towns which were *not cities or bo-
roughs*: and a strong inference arises from the terms of the
case, that *boroughs, cities, and communities were not always
incorporated*.

Here we find one of the material effects of incorporation—
that the corporators must sue and be sued as aggregate
bodies—for the first time distinctly stated. And it appears
to be assumed in this case, as the fact was both before and
shortly after this decision, that other places, as well as cities
and boroughs, were incorporated—whilst, on the other hand,
there were many boroughs which were never made cor-
porations. These circumstances have continued to this day,
which conclusively establishes, that there is no necessary
connexion between cities and boroughs and incorporations— Incorpo-
ration.
and that it is by no means an essential characteristic either
of citizens or burgesses that they should be incorporated. Boroughs.

In an action of trespass, the defendant justified by saying, 1467.
Fol. 76,
H. T.

Edw. IV. "that there is certain land in Dale and Sale, where all the *inhabitants* within the town have been accustomed to inter-common upon account of vicinage." It was objected, that they could not prescribe for such a privilege, unless they could show a *corporation* in them, by the name of the *inhabitants*, and thus make them capable to prescribe:—but it was answered, "that it would suffice to plead an *usage*, for that was a good plea; for instance, that Dale was an *ancient* borough, and all the lands and tenements within, &c., are and have been devisable and devised from time immemorial."

Prescription.

Corporation.

Usage.

Borough by prescription.

Usage.

Inhabitants

This case is important to our present inquiry, as showing one of the first instances in which the doctrine of incorporations was applied to municipal bodies—and as distinctly establishing, that the earliest notion of "incorporations" was founded upon the assumption, that the "INHABITANTS" were *incorporated*:—and so far from its being allowed, that incorporation was necessary for the prescription alleged in this case, it seems with more correctness to have been asserted, that when there was an ancient borough—that is to say, a borough by prescription, of which we have pointed out numerous instances—then, as the borough had existed from time immemorial, so also might there be immemorial customs within it—to be proved by *recent* usage, which is evidence of such usage having existed from time immemorial, unless any thing could be shown to the contrary. And therefore, although, in a town, not a borough by prescription, the "inhabitants" might not be able to prescribe, unless they were incorporated—yet in a borough by prescription, where the inhabitants had been treated as a body aggregate, separated from the rest of the county, then a custom for the inhabitants to enjoy any right or privilege, might be supported by law, and proved by usage.

Fol. 2 B.
H. T.
Serjeants-at-law.

A case of considerable length occurs in the 11th year of Edward IV., respecting the privileges of serjeants-at-law. It appears, that Sir John Paston had sued a bill of debt upon an obligation, against a serjeant-at-law; who urged, that he was not bound to answer it, because that all serjeants-

at-law, from time immemorial, have been impleaded by original writ, and not by bill:—but it was answered, that the prescription was void, that serjeants could not *prescribe*, for they are not *corporate*:—and if they are not *corporate*, they cannot *prescribe*. Edw. IV.

The only ground upon which it could be supposed that serjeants-at-law were incorporated, must have been with reference to the early lawyers having been chiefly ecclesiastics. But there was no pretence for the assertion; and this case is of no further importance, than as showing the crude notions of corporations prevalent at that period, and as drawing our attention to the fact, that the doubt at this time appears to have been, whether such bodies as the “serjeants-at-law,” or the guilds or mysteries to which we have referred, not having any direct connexion with local jurisdiction or municipal rights, could in the eye of the law be dealt with as recognized aggregate bodies:—whereas, on the other hand, the inhabitants of boroughs as burgesses, being recognized by the law as aggregate bodies, separated from the county at large, and directly connected with the local exclusive jurisdiction, and the burdens and privileges of exclusive municipal government, were ever, from the earliest period of our law, recognized as responsible and chargeable aggregate bodies—liable to common burdens, and entitled to common privileges.

Inhabitants.

In a writ brought by a *prior*, the defendant pleaded, “that he was a professed monk, under obedience to the abbey of S.” To which the plaintiff said, “that he and his *predecessors* have pleaded and been impleaded, and have answered without their suffragans, from time immemorial.” And it was held a good plea.

1472.
Fol. 17 B,
M. T.
Prior.

This is a clear instance of a prior, as an ecclesiastical person, taking by succession from his predecessors, being held, as we have long before shown them to have been, a corporation sole, enjoying all the usual corporate powers.

One being impleaded, said, “that the king had granted to the *burgesses* of T., that they should not be impleaded without the walls of their borough, but before the mayor and bailiffs of the city, of things within the city; and that at the

Fol. 17 B,
M. T.

Edw. IV. time of the writ, the defendant was a *burgess* of the city. For which he moved, that the writ should be made void; inasmuch as the king could not take from him his inheritance, nor deal with him in any other court, by bill or plaint. The grant giving authority to hold pleas within the city, for the ease of the parties. For the king cannot take away the right of any party by such grant; but he gives them a court and a judge, before whom the parties shall have right; which is an easement to the party, so that he shall not go out of the city. And this was the reason, that where any thing was done, it should there be decided. And the king can grant cognizance of pleas out of this court; but the party will be driven to sue there. The king can grant exemption from juries, and also *return of writs*; otherwise, every person is entitled to have writs served by the sheriff. Those of the Cinque Ports have such liberty, that they should not be put to answer out of the ports; but the cognizance is conditional. And the grant of the return of writs is good, for no man is damaged by it; because there is *an officer in the franchise to serve writs, which otherwise would be directed to the sheriff.*"

In an early part of our inquiry we asserted, as has been proved by a variety of documents, that all *cities* were *boroughs*; and as far as relates to borough rights, those terms are convertible. This case affords another instance confirmatory of that doctrine. For the grant is stated to be to the *burgesses*, of privileges which in the first sentence are described as to be enjoyed within the *borough*; but the next sentence describes them as to be exercised within the *city*, before the officers of the city, and the defendant speaks of himself as a *burgess of the city*. The case is also material, as showing the nature and objects of local exclusive jurisdictions—the manner in which they were to be exercised—and the principles upon which they were granted and enjoyed. Cognizance is said to be conditional; that is, it was granted on the implied condition, that it would be exercised for the ease and benefit of the subject; and if not, it would by the non-user be forfeited. So that an exclusive jurisdiction not used would

cease; and the general jurisdiction would revive; as we have Edw. IV.
 before observed with respect to Old Sarum:—because the
 subject ought to know where he should sue or be sued;
 which can only be shown by the *usage* under the grant.
 It is also apparent from this case, as we have often
 contended, that the *general jurisdiction* belonged to the
sheriff; and to his and the superior courts:—whilst the *local*
 jurisdiction is the exception, to be proved by the grant of
 the crown in the first instance, and continued subsequently
 by the actual *user* of the franchise.

This is further illustrated by the next case, where it is 1473.
Fol. 8 B.
 shown, that a special grant to any body must be specially
 pleaded; and that the courts will not take judicial notice of
 such grants, unless they are specially shown. Thus, in a
 case against the men of Nottingham it was held, that, as by
 Act of Parliament all corporations and licences granted by
 King Henry VI. were void, the court was not bound to take
 cognizance of them any more than of the private act of a
 private person. And it was held that the act was not
 general, but particular, and confined to corporations: as
 if an act should be made, that all bishops or lords should
 have such a thing, it is only a private act; but when an act is
Private
act.
 general, extending to every man, then it is not necessary
Public
act.
 to be pleaded; for it is a general and common law. And
 when a patent is made to the mayor, aldermen and com-
Mayor.
 monalty, if a man wishes to plead such a patent, he ought
 to show that he was mayor; but it is not necessary to show
 who were the aldermen or the commonalty, for they are the
 body, and the mayor the head. And if the grant should be
 made to the mayor and citizens, it is not necessary to show
 who were citizens, &c. And it was said, that they ought to
 show who was mayor at the time of the grant; but it was
 answered, that if a patent to the mayor and commonalty
 were pleaded generally, it would be good, for it would be
 taken that there was a mayor at the time of the grant; in
 which case a grant made to the mayor and commonalty is
 good; but if there was not a mayor the grant would be void.

From all of which it appears, that these municipal grants

Edw. IV. were considered not as existing under the common law, but operating as special grants, which required to be specially pleaded and proved, as exceptions from the ordinary course of the common law.

1475.
Fol. 29. In another case, two years afterwards, the proof of prescriptions by *usage* is expressly recognized. Thus, a person brought a writ of trespass against another for his trees spoiled by sheep and other beasts. The defendant
Coventry. pleaded, that the place in which, &c. was the city of *Coventry*, an ancient city from time immemorial; and all the citizens and *inhabitants* in the city had, from time immemorial, common in that place for all cattle which were levant and couchant in the same city; and that the defendant was an inhabitant in the same city, and put his beasts in the place in question, as in the common. But it was answered, that the prescription was not good:—for every one cannot prescribe unless he has a certain title; and the lord should act for all his tenants at will. So an *inhabitant* is in effect nothing but a tenant at will, by which the prescription is not good. To which it was answered, that the prescription could be made in another manner and form, as that it has been used from time immemorial in the city of Coventry, that the citizens and *inhabitants* ought to have common together in the same place. The effect of which plea would
Usage. be upon the *use*, and depend upon whether such *usage* had been there or not.

1478.
Fol. 3 B. And in another case a few years afterwards, it was decided
E. T. by the court, “that tenants at will could not prescribe for their own right; but that the *inhabitants* could prescribe for
Usage. a usage.”

And in a subsequent case (fol. 8), in the same year, it was said, that to the churchyard in the Charter-house, there was a common road, to which the *inhabitants* of London had a prescriptive right.

That the doctrine of *villainage* was still in full force in this reign, appears from a case in the same Year Book, in which a plaintiff brought a writ of trespass, and counted that the plaintiff was *free*, and of *free condition*, and all his ancestors
Fol. 32.
T. T.
Villainage.
Free.

were *freemen* from time immemorial. And the defendant Edw. IV. claimed the plaintiff for his *villain*, saying, that he was Villain. seised of him as such, for that one William Browne was seised of the manor of Dale in his demesne, as of fee, to which the plaintiff was *villain regardant*; and the said William, and all those whose estate he has, have been seised of the plaintiff, and of all his *blood*, as *neifs* and *villains* regardant to the said manor, &c. That the said William leased the said manor to the defendant to hold at his will.

That exclusive privileges may be forfeited and lost, as before illustrated by the case of Old Sarum, may be collected from the following case:—

In error sued against the bailiffs of *Reading* it was said, that if the lord of a franchise does a thing or trespass against the court of the king, it is a cause to re-seize the franchise. And in a subsequent part of the case it was urged, that if a lord *refuses* to do that which is in accordance with his franchise, or does a thing *against* his franchise, or *misuses* his franchise by himself or by his deputy, or does *not use* his franchise, in any of these cases, the franchise shall be re-seized. 1480.
Fol. 5,
T. T.
Reading.

In an action brought by the abbot of St. Bennet against the mayor and the commonalty of *Norwich*, they are called a body *corporate*, and are said to be one person in law; and it is added, that if the mayor should be obliged without the assent of the sheriff and commonalty—or the obligation should be without the mayor and commonalty, all is void, unless it should be under their common seal: for the body cannot be bound without the entire act of the body; therefore the absence of the mayor defeats all the obligation. And it is said, they can do nothing, unless done by the sheriff and the commonalty. 1481.
Fol. 7.
E. T.
Norwich.
Corporate.
Mayor.
Seal.

Afterwards, in the same year, the case is further heard Fol. 12 B,
M. T. against the mayor, sheriff, and commonalty; and it was said that they were a body politic; and that in debt brought against an *abbot*, when the obligation was made by his *predecessor*, without the assent of the convent, it is a good plea to say that it was not the deed of the abbot and the convent—or not the deed of the abbot—or not the deed of

Edw. IV. the convent. And it was also urged, that as the mayor and
Norwich. commonalty are an entire body, in an action brought against them, the mayor can appear in proper person, but the sheriff and commonalty cannot; for they should appear by attorney. For if the city be *corporate* by the name of mayor and commonalty, and an action be brought against them as mayor and citizens, they cannot make an attorney:
Misnomer. for then the attorney cannot plead the misnomer of the corporation against his warrant of attorney, for this, that it is contrary to his warranty. And it was stated, that it had been well said that the name of the mayor, sheriff, and commonalty, was an entire body and inseparable: for the mayor cannot appear in proper person, or make an attorney for himself alone, but all the body, mayor, sheriff, and common-
Name. alty, should make an attorney: for they are but one and the same person, having one sole name.

In a subsequent part of the case, the *commonalty* of Islington are given as an instance of a corporation.

It will not be overlooked, that the instance in the preceding part of this case of an *abbot* and *convent*, is an ecclesiastical corporation, which, undoubtedly appears to have been recognized in very early times; and the doctrine of municipal corporations was apparently borrowed from those institutions.

The conclusion of this case, to another point, occurs in this year in a subsequent folio, thus:—

1481. In an action of debt on bond the parties were at issue on
Fol. 55 B, this point, whether it should be tried by them of the city of
M. T. Norwich?—And on the second distringas the jury appears;
Norwich. and one of them comes to the bar, when he was required to be sworn, and says, that the king had granted to them, by his letters patent then produced, that none of them should be put upon a jury out of Norwich, &c.; and prays to be discharged.
Incorporated. And the charter was read, and it was that the king had *incorporated* them of *Norwich* by the name of “citizens and commonalty;” and afterwards in the charter were the words, “we have also granted to the citizens aforesaid, that none
Juries. of them should be put on juries,” &c.

Trem.—It appears that the jury, by this charter, is not

discharged from this inquest; for in every grant which is made, it is necessary that he, to whom the grant is made, should be capable of receiving it; for if the king grant to the *men*, or to the *inhabitants* of I., two acres of land or other such thing, if they be not incorporated by such name before, the grant is void, if nothing be reserved to the king. And if the king grant to the *men* of I., their *heirs* and successors, a manor, rendering to the king a certain rent, for any thing relating to this manor, *this is no corporation to any other intent*. And if the king grant to the men or inhabitants of I., that they shall be discharged of toll, if they be not incorporated before, the grant is void.

Briggs.—E contra, for by the granting of the charter they may annually choose one of them to be the mayor; which mayor shall be coroner and escheator within the city. And they may also choose two sheriffs, who shall have before them cognizance of pleas. Now this clause is extended to the citizens, to wit, that none of them shall be put on juries; and there are divers names in this corporation which are effectual, according to the charters; for the mayor enjoys his office, and the sheriffs their office, by this charter. Why shall not the citizens have advantage also of this clause, which is extended to themselves in the same charter? and no one will deny, but that if the words “*concessimus etiam*” had been out of the charter, that it would have been good enough; and it seems that it is now entirely of the same effect, for “*civibus*” is to the same effect as “*commonalty*.”

Vavis.—E contra, every corporate body ought to take advantage, and also to make their grants and releases according to their incorporation; and if they vary from this it is not good. As in *Oxford*, the incorporation of a college is by the name of “*masters and scholars*;” if they make a release under their common seal by the name of scholars, in an action brought by them according to their incorporation, this shall be no bar; because it is a variation. The same law is with respect to a grant made to them. And if each of the scholars releases, their several deed is no bar, &c.; for when they are not named according to their incorporation, they are stran-

Edw. IV.

Norwich.

Mismomer.

Oxford.

Edw. IV. gers to this corporated body, which can give no advantage to
Norwich. them. As if I enfeoff a man, upon condition to enfeoff one A. before such a day: if he does not do it, A. cannot enter; for he is a stranger to the condition;* but the entry shall be for me or my heirs, who are privies to the condition; now in this case their incorporation is to the citizens and commonalty, which is as properly the name of the body, as the name of baptism is the name of any natural person; wherefore, inasmuch as this clause "*concessimus etiam civibus*" is afterwards, this name is foreign to the name of the corporation; and they have no such name, by which they can take advantage of this. And notwithstanding the grant shall be good, it ought to be demanded, according to the name of the corporation.

Suliard.—It seems that they shall have advantage of the grant; for the grant is *civibus et communitati*, that they shall have such a franchise; and gives to them divers powers, to wit, to elect divers officers,—which officers, by the same charter, have particular names and powers, as the mayor to be coroner; and the sheriffs to hold plea, &c. to have the *return of writs*, &c. and to be discharged from juries. And it seems that these words, "*concessimus civibus prædictis*," shall be taken as strong as if it had been *civibus et communitati*; for the word *civibus* is in the premises, and *includes communitati*, wherefore the name of the corporation is expressed and included by this word. And it seems that this grant *civibus* is not foreign to the name of the corporation. And, as has been well said, they are come in sufficient time; for, before now, they could not have advantage of this; and it is not like the case of cognizance. But if one juryman who is exempt be sworn, and the inquest remain for default of jurors till the next day, he shall never afterwards have advantage of the charter. And it seems that this act of Parliament is special, for it is only made for all cities and boroughs. And if a man will have advantage of this act, he ought to plead it; but here it seems that the charter is good without the act.

Return of
writs.

* See the case of *Henly v. The Corporation of Lyme*, 5 Bing. p. 91, 3 Barn. & Adol. 77, in error, and Dom. Proc. 25 June, 1834.

Brian.—To the same intent.—And it seems that this act, ^{Edw. IV.} which is recited, is special, and not general; and we are not ^{Norwich.} bound to take notice of it as of a general statute, except the party show it to us in pleading. And it appears to me, that the *king has no power to grant to any man any exemption from juries*, for he would have the same power to discharge all the people of England; and then his commons fail of their right. For it is just the same as if the king granted to a man, that he should render to me in any action, which cannot be; but the *king may grant to a man, that he shall not be sworn on a jury out of such a town, or of such a precinct, &c.* And here the juror has come in sufficient time; for he had come in each day. This would have been to no purpose, for he could not be sworn without his companions; and the sheriff's return shall not be prejudicial to him, notwithstanding he will not return the matter; but this day he shall have advantage, and each individual person, and not the corporate body; for, if all the commons are impanelled, they, in a body, could not take the challenge, for this body cannot appear in propria persona, wherefore each individual ought to have advantage, &c. And here the grant is good, notwithstanding it is not made according to the name of corporation; as, if the king grant *hominibus de Islington*, that they shall be discharged from toll; this is a good corporation, to this intent; but not to purchase, &c. And if the king grant *inhabitantibus de*, &c. that they may elect a mayor; and after this election, that they may implead ^{Mismomer.} and be impleaded by the name of mayor and commonalty of D., now this word "*inhabitantibus*" differs from the name, still it is good. So here, where the king grants *civibus prædictis*, that they should not be sworn on juries out of, &c. this new grant shall not enure to them, as they are no corporation in this respect; wherefore, &c.*

We have given this case at much length, as it so fully exhibits the doctrines at that time prevalent with respect

* 13 Hen. VII. 10. 5. 1 Edw. IV. ca. 1. 38 Hen. VI. 38. 13 Edw. IV. 8. 7 Edw. IV. 14. 30.

Edw. IV. to corporations:—and it also explains, that the prerogative of the crown in granting exemptions, was confined to those cases only in which the discharge of public duties in a particular case was substituted for a more general obligation.

1481.
Fol. 16 B,
H. T. In another case it was said, that neither the death nor the removal of a *mayor* would abate a writ, for the mayor and *commonalty* are a body which never die.

1482.
Fol. 22,
M. T. From the following case it will appear, that the sheriff's tourn in the county, and the leets or other franchises, were both at this time practically in use. Thus:—

Tourn. A presentment taken before the sheriff in his *tourn*, was returned into the King's Bench by a certiorari, of a person who had feloniously assaulted a female. The chief justice said, it appeared to him that the presentment was void; and that the sheriff had no power to take the presentment, for *his power in his tourn, and the reeve of any lord in his leet, are the same*: and that they have not power to inquire in their tourn, or *leet*, of anything but felony and trespass at common law, and nothing else. And the presentment is void, for before the statute of William I. there was not at the common law, any punishment for such an offence; but only an action of trespass upon the case. And that statute provided fine and imprisonment; and it was made inquirable by the king wheresoever he was. After that came the statute of William II., which provides that this offence should be considered felony; and therefore the sheriff had not the power of inquiry at common law, and consequently the presentment is void.

Fol. 34,
M. T. We find at this period, that the masters and the brethren of the two orders of angels in Brandford claimed to be incorporated; but their incorporation by that name was denied. And it was pleaded in abatement, that they were incorporated by the name of "the master and brethren of the fraternity of All-Saints and the two orders of Angels."

Fol. 43,
H. T. A prescription was claimed in the same year, and dismissed as being against common right and reason.

PARLIAMENT ROLLS.

We also find in the Parliament Rolls of this reign, that the term “corporate” became common in those records. Thus:—

1463.

After providing for the apparel of divers of the superior ranks, an act proceeds to order, that all mayors and sheriffs of cities, towns and boroughs of this realm, such as be *shires corporate*; and all mayors and bailiffs of all other cities, and of every of the towns of the five ports, and the barons of the same ports, that are selected to do their service at the coronation of the king and queen; and mayors and bailiffs of boroughs *corporate*, being shire towns, and the mayors and bailiffs of the counties Chester and Lynne, and the recorders of the said cities, boroughs and towns, being *shires corporate*, and of cities having recorders, and the aldermen of the same, may wear the array of squires of 40*l.* per annum.

Shires
Corporate.

And again, the statute of *Liveries* was directed not to extend to any livery given at the coronation of the king and queen, &c.; or by any *guild, fraternity, or craft corporate*; by the mayor or sheriff of London; or other head officer of any city, borough, town, or port of this realm, during the time of their being in office.

1467.

The *inhabitants* and *residents* of the hundreds of Lyfton, Tavistoke, and Roughburgh, in the county of Devon, are excepted from an ordinance respecting cloth.

Inhabitants

In this entry, the word “inhabitants” means, beyond all question, the persons *resident* within the district: and it would be difficult to say, why any doubt should be entertained of its having that application when used in charters; of which we shall find numerous instances, in the reign of Queen Elizabeth.

In the following entry, the courts *leet* and view of *frankpledge*, are again distinctly recognized.

1472.

“Whereas the mayors, bailiffs, portreeves, and other like governors of every city, borough, and town of substance, for the most part, have courts *leet*, or views of *frankpledge*, yearly holden within the same cities, boroughs, and towns, with

Leets.

Edw. IV. survey of all victuals there, and correction and punishment of the breakers and misdoers of assise of the same, to be presented and amerced, if any default be found : and letters patent having been issued, appointing surveyors, and correctors of victuals, to the great hindrance and injury of the victuallers, by their extortions and oppressions : the commons pray that they may be deprived of the offices and jurisdiction so given to them :”—which is granted.

1473. The next entry affords another instance, in addition to those we quote from the Year Books, of the recognition of
Villainage. the doctrine of villainage and neifty as then in use, and of the frequent grants of manumission.

“ Provided also, that neither this act, nor any other made or to be made in this present Parliament, nor any thing in any of them contained, extend, or be prejudicial to any letters patent, or letters of privy seal of pardon—general or special—nor making of denizen ; nor to any manumission of *villainage* or *neifty*, made or granted, or to be made or granted, to any person or persons, by the king, or any of the late pretended kings, before the feast of St. Thomas the Apostle.”

1482. In this year, there is also another instance of an ecclesiastical corporation, with the same powers as were usually granted to the municipal aggregate bodies.

Canons of Windsor. “ For eschewing all ambiguities and doubts which might be taken for any cause, touching the dean and canons of the king’s free chapel of St. George, within his castle of Windsor, otherwise called his college of St. George, in their corporation, nomination, capacity, or any possession or hereditament thereto belonging ; which chapel or college was first founded by the king’s right noble progenitor, King Edward III. And for the more surety of the same dean and canons in all the premises, the king, by the assent, &c., grants and ordains, that the now dean, and the canons of the said free chapel, by the name of ‘ dean and canons of the king’s free chapel of St. George, within his castle of Windsor,’ be
Corporate. one body *corporate*, in deed and name ; and by that name be called for evermore ; and that they and their *successors*,

by that name, be persons in law capable to purchase, receive, Edw. IV.
and take lands, tenements, rents, reversions, services, liberties, franchises, privileges, and immunities, and other possessions, whatsoever they be, to them and to their *successors*; to be had, held, and possessed, in fee and perpetuity. And that they have a common seal to serve for needs and causes, touching the said deans and canons, and their *successors*. And plead and be impleaded, under the same name. That all letters patent made by the king, or his progenitors, be good and effectual to the said *corporation and their successors*. That the said dean and canons may hold, possess, and enjoy all lands, tenements, &c., leets, law-days, &c., theretofore given, or granted to them, by any letters patent."

IRELAND.

We have but few charters in this reign, relative to Ireland, Scotland, or Wales.

With respect to Ireland, we find only an entry of a bye-law, made in the city of *Dublin*, which provides, that any man *living* in Dublin, who sued another *living* in Dublin, in any other court than the Tholsey, should forfeit to the mayor and bailiffs of Dublin 10*l.*, and lose his franchise. Dublin.
1473.

The court of Tholsey was no doubt borrowed from the city of Bristol, where such a court continues in the full exercise of its functions to the present day. And the same entry recognizes the power of disfranchisement in the mayor and bailiffs, as it is in the superior officers of the corporations in England.

SCOTLAND.

James III., of Scotland, in this year, granted a charter to the burgh of *Inverness*,* and the provost (*præposito*), bailiffs, burgesses, and *commonalty* of the same — referring to former charters, by William, Alexander, David, and James I., and the petition of the provost, bailiffs, burgesses, and community, for their renewal and confirmation. It then recites at length, the first, second, third, and fourth charters of 1464.

* Wight on Elections, App. 408.

Edw. IV. King William—two of Alexander—one of David—and one of James I., of Scotland—and James III., in conclusion, confirms all the former charters.

The object of this grant evidently was, to preserve and continue all the privileges which had been given by former kings.

WALES.

Cardiff.
1466.

That the boroughs in Wales continued to enjoy the same privileges which they had before, may be inferred from the confirmations of former charters granted to *Cardiff*: particularly that of Henry VI. to the *burgesses* and other *men* and tenants of the towns of Cardiff, Usk, Caerleon, Newport, Cowbridge, Neath, and Kenefig, in these words. "Now we, ratifying and approving the aforesaid letters, and all and singular the things therein contained, do accept and approve, and by the tenor of these presents, do ratify and confirm them, for ourselves and our heirs, as much as in us lies, to our now beloved burgesses, and to the other *men* and tenants of the aforesaid towns of Cardiff, Usk, Caerleon, Newport, Cowbridge, and Kenefig, and their successors, as the aforesaid letters reasonably testify."

1478.
Inhabitants

Twelve years afterwards, Richard, Duke of Gloucester, directed a charter to the bailiffs, *burgesses*, *inhabitants*, tenants, and *residents*, of the town of Cardiff; stating that he had inspected the letters patent of King Edward IV., made in the fifth year of his reign, confirming all their liberties anciently enjoyed; and that, considering the fidelity which the *burgesses* and *inhabitants* have had towards him and his ancestors; he ratified and approved the letters and charters of the king. Provided that the *burgesses* and *inhabitants*, in future elections of the bailiffs of the town of Cardiff, elected for bailiffs the more considerable, worthy, and better persons of the aforesaid town. That they should have the power of ordering the *royal* and *hundred courts*, to be holden on Thursday: And that the bailiffs, *burgesses*, and *inhabitants*, might have authority and power to name and elect in the place of any bailiff who might be

Royal and
hundred
courts.

infirm in body, or likely to be absent without the town, as Edw. IV. substitute in his place, one of the four provosts.

The royal court here mentioned, is the court leet, at which Leet. we have before seen, the suit royal, to the king, was performed, and pleas of the crown adjudged. It is here properly distinguished from the hundred courts, in which civil pleas were determined.

With such a variety of documents as we have already quoted respecting England, it is unnecessary to accumulate many relative to Ireland, Scotland, or Wales:—the above specimens will be sufficient to convince the reader, that no material alteration was made in either of those parts of the kingdom, with respect to the nature or municipal government of the boroughs; nor with respect to the class or condition of the burgesses.

CONCLUSION.

The termination of this reign has brought us to a period, when the grants of incorporation to municipal bodies having been frequent, the doctrine connected with them appears to have been generally adopted by the Courts, as we have seen in the Year Books.

The point having been distinctly established, that the first charter of incorporation to a municipal body, was in the 18th of Henry VI., the succeeding charters of the same description, which we have quoted in this reign, have shown how those grants gradually increased and spread themselves over the country; though it must be remembered, that many cities, boroughs, and towns, still continued unincorporated—the metropolis, and the important city of Bristol, being striking instances of that kind.

However, the general prevalence of corporations in this period of our history, will for the future render any particular inquiry into this part of our subject unnecessary; excepting that the succeeding grants of incorporation will be shortly noted as they occur.

We have commented upon the Statutes—Charters—decided

Edw. IV. cases in the Year Books—and Parliament Rolls—as they occurred in their chronological succession : and therefore no further observations are requisite with respect to them. But the characteristic feature of this reign, is the increasing importance of the Commons House of Parliament.

House of Commons.

The recital of the statute in the reign of Henry VI., has shown that the people at large had begun to take a great interest in the election of the knights for the shires ; and the importance to Edward IV. of obtaining a recognition of his title to the crown by a subservient Parliament, made him, upon this one head, sufficiently alive to the expediency of obtaining an ascendant influence in the Commons ; whilst on the other hand, that effort on the part of the king satisfied the considerable men in the country, of the political importance of a seat and interest in the House, and stimulated them to make efforts for that purpose. Thus we have seen from the Paston Letters, that some of the influential men of the time—the family of Paston, and others—took an active interest in the election for the shire of Norfolk. And a fact important to our present inquiry transpires about the same time ; viz. that one of the family being disappointed in his election for Maldon, it is suggested to him, that there are some decayed boroughs, which had not lately returned members to Parliament, and for one of which he might procure himself to be returned. The suggestion we shall see was afterwards acted upon in the reign of Henry VIII., and particularly at the beginning of the reign of Queen Elizabeth ; when the prevalence of the practice called for the interposition of Parliament, and it was declared upon the part of the crown that it should not be again adopted.*

Decayed boroughs.

Littleton. Littleton, the great lawyer, who had been made a serjeant in the reign of Henry VI., and a judge in this reign, in the 14th year of Edward IV., compiled his treatise upon the law ; and died about seven years after : but the work does not appear to have been printed till the 24th of Henry VIII. He was therefore actively engaged in the practice of the

1482.

* See D'Ewes' Journal.

law for a considerable portion of that period, during which Edw. IV. the doctrine of incorporation had grown into use—whilst Littleton. the statutes to which we have referred were enacted—and the cases in the courts of law determined; however there is little in his work which relates to this head of our law. Indeed his apprehension seems to have been, that the doctrine of taking by succession was chiefly confined to ecclesiastical bodies, and others of the same description.—Thus “successors” are expressly mentioned in the 6th chapter Successors of the 2d book, section 133, which relates to frankalmoigne, or holding in free alms, where he speaks “of an abbot or prior, and their convents, holding lands to them and their *successors* in pure alms.” And in the next section the same is stated of a dean and chapter, or parson; but the same terms do not appear to be applied to municipal bodies.

In the chapter relative to burgage tenure, Burgage tenure. Littleton speaks of the ancient boroughs; and of their being held of the king: which, generally speaking, is a sufficient description of that species of tenure; inasmuch as, although boroughs might be held of any other lord, spiritual or temporal, yet, in strictness, there could be no free borough, except by grant of the king, directly or indirectly.

Littleton, however, seems to have thought, that boroughs were so called from the burgesses sent from them to the Parliament; whereas the converse is true, as we have distinctly shown: namely, that the burgesses to Parliament were so called from the boroughs; the latter having, in point of time, preceded the other by some centuries.

Littleton also has a long chapter upon the subject of tenure by *villainage*, in which *villains* and *freemen* are contradistinguished from each other; and there can be no doubt, but that both those classes were at that time fully known and recognized by the law.* Cap. 11. Sect. 172. Villains. Freemen.

Under all the above circumstances, the reign of Edward IV. appears to have been as important, in the progress of our researches, as any that preceded it;—particularly with respect

* See Year Books, *passim*.

Edw. IV. to the question, as to the time when municipal incorporations began, which was, beyond all controversy, in the reign of Henry VI.

EDWARD V.

The few months, which comprised the reign of Edward V., remarkable only for the court intrigues which characterised it, and the overwhelming influence of the Protector, afford us no matter to illustrate our present subject—neither Charter, Statute, entry on the Parliament Rolls, nor in the Year Books, occur in this dark period, to throw any light upon our inquiries—we therefore pass on to the short interregnum of Richard III.

RICHARD III.

This reign—brief, cruel, and turbulent—also affords us but few documents to further our researches. We shall however insert them, in the order we have before adopted.

STATUTES.

1483. The 4th chapter of the first year of this reign, relates to
Cap. 4. the estate requisite for those who were to be the impannelled
Tourn. jurors in the *sheriff's tourn*—which, from the preamble
 of the statute, appears at that time to have been in full
 practice.
- Cap. 9. In the 9th chapter—the statute relative to foreign mer-
 chants and aliens, inhabiting and keeping houses in London
 and other cities and boroughs—speaks also of the *hosts* who
Strangers. entertain foreigners, and of the number of *strangers* who
 resort to London, and other cities, boroughs, and towns :—
 but corporate towns are not mentioned.

The same omission occurs again in the 12th chapter of the Rich. III.
same year. Cap. 12.

CHARTERS.

The early charters, which we have before extracted, to the end of the reign of Edward IV., are deposited in the Tower of London:—from the commencement of this reign, they are found in the Rolls Chapel.*

In that depositary there is a charter, of the first year of this reign, to the burgesses of *Huntingdon*, incorporating Huntingdon.
1483.
them; and giving them the usual corporate powers.

It appears to be the first grant of that description to Huntingdon; and there is nothing on the face of it to show that it had been before treated as a corporation, either by implication or by express grant. The persons incorporated are the burgesses—no mode of selecting whom is pointed Burgesses.
out. What class of persons therefore were incorporated by this charter under that name, must be ascertained by some other means. It is however at all events clear, that the burgesses and corporators were the same—and that although the burgesses were, by virtue of this charter, incorporated, still their situation or character, as burgesses, was not otherwise altered than by having the superadded privileges of corporators. Burgesses existed in this place before the reign of William the Conqueror, as appears by the extracts from Domesday. And the consequence is, that the proper question with respect to this place is, Who were the burgesses in the Saxon times, and anterior to the advent of William I.? Can any reasonable person contend that they were "*free-* Freemen.
men," in the modern sense of that word:—admitted by the corporation at their arbitrary will, as free of the corporation

* There are amongst these records in Chancery, the Charter—the Patent—and the Confirmation Rolls.

The "Charter Rolls" contain charters—creations of honour—and other grants of the crown, which conclude "*Hiis testibus*;" beginning in the first year of Richard III. and ending the eighth year of Henry VIII.

The "Patent Rolls" commence with a small roll of Edward V., and are continued to the present time.

The "Confirmation Rolls" begin with the reign of Richard III., and end with the 14th year of James I.; since which period confirmations are enrolled promiscuously with other grants upon the Patent Rolls.

Rich. III. for the purposes of trade? or can any person doubt but that they were the *liberi homines*—residing in the borough—sharing in its burdens, as well personal as pecuniary?—that is, paying scot and bearing lot—and being enrolled, and sworn to their allegiance to the king and the laws in the court leet of the borough—consequently, became the *liberi et legales homines* of the place—the burgesses of the borough:—the sworn—free—inhabitant householders—paying scot and bearing lot.

Huntingdon.

The passage relative to the exemptions granted as well to the bailiffs and burgesses, as to the tenants and residents, seems, on the face of it, to import, that there were tenants and residents distinct from the burgesses—at least it is capable of that construction.

Whether, considering the loose manner in which charters are drawn up, so critical a construction of these words, founded upon an assumption of their precise accuracy, is to be adopted, has been already discussed. But even taking them with all that strictness of construction, they are open to this obvious explanation, that there would necessarily be some tenants and residents who were not burgesses,—as peers, women, ecclesiastics, minors, and persons who, not having held or resided for a year in the place, had not been sworn and enrolled as burgesses at the court leet:—to include all these persons in the grant of privileges, it was necessary those words should be introduced. And they are descriptive of persons who, being resident and holding houses, would, were they not of one of the above excepted classes, have been included under the general name of *burgesses*.

Sandwich. There is also a charter in the same year, to the mayor and barons of *Sandwich*, granting them a sum out of the customs of the port, for the fortification and preservation of the town; but it, unlike that of Huntingdon, states nothing of their being incorporated.

Grantham.
1483.

We find from the Harleian Manuscripts* the aldermen and burgesses of *Grantham* received from the king a grant, that they and their successors should be justices of the peace

* Harl. MSS. 433, p. 446.

within their town; and keep sessions of the peace as oft as it ^{Rich. III.} should be necessary, by the warrant of the aldermen. That ^{Grantham.} they should have a gaol, and *execution of precepts* and warrants within the town and soke. That the *sheriff of Lincolnshire should have no execution thereof within the same*. That they should have weekly a market in the town; and two fairs yearly, with all liberties appertaining thereto. That the aldermen and burgesses should have the ordinance and assignment of all stalls and places in the fair and market; and should have for ever all manner of tallages, stallage, and profits, without any payment. Also, that neither the aldermen and burgesses, nor *any other dwelling* within the ^{Dwelling.} borough and soke, should from thenceforth be compelled to be impannelled or pass in any attaints without the town, borough, or soke. That they and any other *dwelling* within the borough and soke, should not be chosen or compelled to be sheriff of any county. That they should have a common seal; with all measures, weights, &c. And that the clerk of the market should not meddle in any point with them.

This charter, like that of Huntingdon, speaks of the burgesses, and "any others dwelling there:"—These terms being in substance the same as those of the charter of Huntingdon, are subject to the same explanation: with the additional observations also; that all the persons who are to enjoy the privileges there, as well the burgesses as the others, are described generally as *dwelling* within the bo- ^{Dwelling.} rough. And although many of the usual corporate powers ⁺ are granted, there is nothing said of this place having been ^{2.} before incorporated, ~~or of any intention of giving it that privilege.~~

The bailiff and burgesses of the town of *Pontefract* re- ^{Pontefract} ceived a charter in the same year, granting that they might have their *merchant guild* as theretofore; and all the liberties ^{Merchant} and free customs which the burgesses and *inhabitants* of the ^{Guild.} town or borough of Stamford had thitherto enjoyed.

That the borough should be a free borough. And that, by the name of "the mayor and burgesses of the town and

→ Give ante pp. 970 et 971

Rich. III. "borough of Pontefract," they should be *corporate*, and one
 Corporate. perpetual community in name and deed. That they might have perpetual succession; and take and receive lands; and plead and be impleaded. That in the mote hall, the mayor and burgesses, and their *heirs* and successors, should elect annually from themselves, 13 comburgesses of the most worthy men, one of whom should be the mayor: to be elected by the comburgesses.

The charter then, at great length, provides for the election of a coroner and other officers:—giving also cognizance over real and personal actions within the borough—exclusive jurisdiction—freedom from toll—and other liberties.

Oath. The importance of the oath of allegiance, to which we have so frequently adverted, as taken at the court leet, may be collected from the following document:* as well as the essential fact, that it was to be taken by *all* the *inhabitants*, who had not any of the grounds of exemption, to which we have before adverted in commenting on the Huntingdon charters. The regulations as to liveries, will also appear by this document to be applied to *all* the *inhabitants*.

Richard III.: To our trusty knight, Sir John Savage; and John Bamme, sheriff, of our county of Kent: Know ye, that we assigned you to call afore you all manner of temporal men of our subjects, *inhabitants* within the hundred of Maideston, Brincheslee, Twyford, Chateham, Billingham, and the hundred and city of Rouchester, being of the age of between 16 years and 60, there to appear, and to be *sworn* to us, in manner ensuing:—"I shall true and faithful liege man be to our sovereign lord King Richard III., by the grace of God king of England and of France, and lord of Ireland, and to him, his heirs and successors kings of England, my faith and truth shall bear during my life; and no treason nor other thing hide that shall be hurtful to his most royal person; but that I shall open and disclose it to his highness, or to some of his noble council, in all the haste possible that I can; and his part utterly take against all earthly creatures; and no lyverey, bargain nor

* Harl. MSS. 433, p. 141.

“cognoisaunce shall take from henceforth of any person Rich. III.
 “contrary to the statutes and ordinances thereof made; nor
 “any of his rebels and traitors succour, harbour, nor favour;
 “contrary to the duty of ligeaunce; but put me in my utter-
 “most devoir to take them. So help me God and the holy
 “Evangelists.”

We also find the following document with respect to liveries, oaths, &c.

Richard III.: To the mayor and bailiffs of the town of North-
ampton.
Northampton:—forasmuch as we understand that by re-
 teynedors, othes, giving of lyveres, clothings, signes and
 cognoissances of time passed within our town of North-
 ampton, great divisions, dissensions and debates have grown
 amongst our subjects, *inhabitants* of the same, not only to
 the great perturbation of our peace and good will to be had
 within the town, but in manifest contempt of our laws: We,
 intending love, peace and unity to be established within our
 town, for the universal weal of the same, command you to
 make open proclamation, charging strictly in our behalf, that
 from henceforth none of the *inhabitants* within the same
 receive any reteyndors, lyveres, clothing or cognoissance
 of any persons of what estate, degree or condition soever
 they be.*

From an entry in the books of the borough of *Hythe* of Hythe.
 this year, we find an accurate description of the persons who
 were the burgesses or barons of that port, under the name of
resiants or *indwellers*.

“Memorandum.—That the Twesday next after the fest A. fol. 14 a.
1483.
 of Seynt Margarete, in the first yere of the reigne of Kyng
 Richarde the III^d, att the Brodell,† holde att Romene, was
 concluded by all the hole house, &c., that if eny *freeman* Freemen.
receaunt, or any other *indweller* of the five ports, or eny of Resiants.
 their membries, serve eny personal account in eny court oute
 of the liberties of the five ports, agenst eny personal indweller
 of the same liberties, such person to lose, &c. 10 marks, &c.”

The said sum to be called “*a common fine*,” that is to say of A. fol. 14 b.
Fine.
 lands, tenements, or chattels, at the will of the mayors, bai-

* Harl. MSS. 433, p. 111.

† I. e. Brother-hall.

Rich. III. liffs, or their successors; the which sum, called the *common*
 Foreigners *fine*, to be levied as well of the *foreigners'* lands, tenements,
 or chattels, as of the lands, tenements, or chattels of the
 Inhabitants *inhabitants* within the said five ports, or members of the
 same. And that every common fine from henceforth, be
 paid within 15 days after that it shall happen to be set.

It should be observed, that the terms "freemen receaunt,"
 "or indwellers," are here clearly used as descriptive of the
 persons who were as barons or burgesses enjoying the
 privileges of the Cinque Ports:— and that those terms
 undoubtedly meant the *liberi homines* of the common law,
 householders in the borough or port.

Year Book That the sheriff's *tourn* was also in practice in this reign,
 Tourn. may be collected from the following solitary entry in the
 Year Books, applicable to our subject.

Fol. 1. Upon a presentment taken before the sheriff in his *tourn*,
 M. T. it was contended (in which the court afterwards acquiesced),
 that the presentment was not sufficient, for it was taken be-
 fore the sheriff in his *tourn*; and the sheriff has not power to
 inquire of any thing but those things which are of common
 law; and as this offence was inquirable by statute, and pun-
 ishment is given by statute, therefore the presentment is
 void; for the sheriff, at his *tourn*, has only to inquire of
 nuisances, as bloodshed and purprestures, &c.

The following case of this period, relative to an ecclesias-
 tical person, and in some degree referring to corporations,
 is reported in Jenkins' Centuries:*

A prior, dative and removable, who has neither convent
 nor a common seal, and who never was impleaded or im-
 pleadable, brings a writ of error upon a fine levied by his
predecessor, and this matter was assigned for error; this
 abates the writ; for it is repugnant that the *successor* of
 such a prior should have a writ of error if he could not im-
 plead or be impleaded. And such prior, if he has no con-
 vent, is but as a monk; and a fine levied by a monk of the

* Case VI. fourth century.

possessions of the abbey is void ; for, *partes finis nihil habuerunt*. Rich. III.

It is clear, from this case, that the doctrine of corporations was not even as to ecclesiastical bodies, at this time clearly established or confirmed.

CONCLUSION.

These few entries close the documents relative to England for this reign ; we proceed now to cite the few which relate to

WALES.

Richard III. granted to the burgesses and inhabitants of the town or borough of *Llanymthenery*,* that their borough should be a free borough *corporate* in name and deed of one bailiff and burgesses—and that the burgesses and *inhabitants* should have the same liberties as thitherto in every respect. That the bailiff and burgesses should be one corporate body in name and deed, by the name of “the burgesses of Llanymthenery.” That they might have perpetual succession—and by that name take and give lands, and plead, and be impleaded. Llanym-
thenery.
Corporate.
Inhabitants

Provisions then follow for the election of a bailiff, coroner, &c., by the burgesses, with the grant of a fair.†

An important document also occurs of this date, relative to the towns and lordships of *Haverfordwest* and *Tenby*,‡ reciting, that the king was informed that divers gentlemen, *not resiant* nor *dwelling* within the towns of Haverford and Tynbigh, parcel of the shire of Pembroke, had been received and admitted to be burgesses, by virtue and colour whereof they pretend themselves to be discharged of appearance to pass upon any jury or inquest within the lordship of Haverford, or the shire of Pembroke, to the subversion of good and substantial rules there aforetime had and continued. The king, eschewing the inconveniences that further might ensue by such behalves, charges the burgesses utterly to *dismiss* and Haverford-
west and
Tenby.
Non-resi-
dents.

* Harl. MSS. 433, p. 94.

† This appears to be one of the first charters of incorporation to any borough in Wales.

‡ Harl. MSS. 433, p. 300.

Rich. III. *discharge* all those persons of the privilege of burgesses there, which be *not continually resident and inhabiting* amongst them. And also to forbear to admit any other *foreigners* to use and enjoy like privileges hereafter.

Haverford-
west and
Tenby.
Foreigners.

It will be observed, that there is nothing in this document relative to any incorporation, or in any manner referring to corporate powers: but it distinctly appears that the burgesses who enjoyed, and who ought to have enjoyed, the privileges of the place, were persons *continually abiding and inhabiting in the borough*.

IRELAND.

We proceed next to quote a few charters, as illustrative of the history of the Irish boroughs at this period.

We have not been enabled to discover from an inspection of the patent and confirmation rolls of this reign, that more than five charters were granted by this king to Ireland.

Waterford.
1483.

The first confirms to the mayor and commonalty of the city of *Waterford*,* all their previous liberties and franchises, with a few unimportant additional privileges.

Youghal.
1484.

The second is a charter of *incorporation* of the mayor, bailiffs, burgesses, and *commonalty* of the town of *Youghal*,† which commences with a recital, that in consequence of the town of Youghal being surrounded by English rebels, and by violators of the peace belonging to Ireland, thereby causing great depopulation and desolation; the king granted that all and singular the *inhabitants* within the town, who should be *admitted* to the franchises of the town, according to the *ancient custom* thereof, should annually assemble and elect from themselves one mayor and two bailiffs, to have the governance of the burgesses and commonalty for the time being; that by the name of “the mayor, bailiffs, burgesses, and commonalty of the town of Youghal,” they should plead and be impleaded, and should be for ever *incorporate*,‡ &c.—that they should have jurisdiction over all personal actions,

* Pat. 1 Ric. III. p. 2, n. 161.

† Pat. 2 Ric. III. p. 3, n. 125.

‡ This is one of the first charters of incorporation that we have been enabled to find, to any borough in Ireland.

&c.;—assise of novel disseisin, &c., arising within the town—Rich. III.
 that they should have all fines, amercements, profits, &c.—Youghal.
 that no other justice or minister, but the mayor and bailiffs,
 should have the power of holding any real or personal pleas Non-in-
 within the town—that they should be free of toll, pontage, tromit.
 passage, &c. through all England and Ireland—and a general
 confirmation of all their previous liberties concludes the
 charter.

Although Youghal is thus for the first time incorporated, no alteration whatever is made in the class or nature of the burgesses:—on the contrary, reference is expressly made to the *ancient custom* of admitting them:—and it cannot be doubted that such *ancient* custom of admission was, as we have seen in the English boroughs, by swearing and enrolment at the court leet:—and it is distinctly manifest, both from the general object of the charter, as well as from the express words of it, that the persons to be admitted were the *inhabitants*.

Dublin appears to have been the next place which, by the Dublin.
 third Irish charter on the roll, partook of the royal favour,*
 as the “mayor, bailiffs, commoralty, and citizens of the 1484.
 “city and chamber of Dublin, or by whatsoever corporation
 “or corporations, or name or names, they may be called in
 “any letters patent,” received a grant, that the mayor and
 recorder for the time being should be justices of the peace;
 that the mayor and sheriffs might have and keep a gaol in
 any part of the city, &c.; and that the mayor and recorder
 might make a gaol delivery, with a release of 49*l.* 6*s.* 8*d.*
 yearly, part of 200 marks, yearly crown rent, for 60 years,
 towards walling and paving the city.

The general words introduced into this charter, “by whatsoever corporation or name they may be called,” from which the inference was intended to be drawn, that Dublin had been previously incorporated, became afterwards very common in the charters granted to the English boroughs during the reigns of Queen Elizabeth, Charles I., Charles II., and James I.—and they occur in the statute of William III., re-

* Pat. 2 Ric. III. p. 3, n. 127.

Rich. III. versing the judgment on the quo warranto against the citizens of London. They are however so general, and on the face of them so suspicious, that even standing alone, they would have but little weight:—but when it is considered that there are many places, in grants to which they are used, but which certainly were never previously incorporated, their weight is altogether destroyed: and from the documents we have before seen as to Dublin, we may safely affirm, that notwithstanding these high sounding words, that city was not incorporated.

Galway. From the Confirmation Rolls,* we find that *Galway* received a charter of confirmation of its former immunities, with a recital of the charters granted by Richard II. and other kings. A few additional, but unimportant privileges, were granted by Richard III.; but no corporate powers.

The last charter upon the Confirmation Rolls,† is another Waterford. to *Waterford*, of considerable length—containing, by inspeimus, all the previous grants made to that city:—but the king does not give any further extension of their franchises.

HENRY VII.

The growing importance of Parliament, which we have before noted in the reign of Henry VI., continued increasing during the succeeding reigns; and the disputed right to the throne of those kings, made it more important for them to obtain an influence over the House of Commons.

Henry VII., who had such strong reasons for courting the assistance of Parliament, seems to have succeeded in effectually bringing it under his control and influence, which lasted during his entire reign; and, as we shall hereafter perceive, during a considerable part of that of his successor; and which, as one of its fruits, produced the confirmation of the powers of the Star Chamber.‡

* Rot. Conf. 2 Ric. III. p. 2, n. 12. † Rot. Conf. 2 Ric. III. p. 3, n. 10.

‡ Rot. Parl. 3 Hen. VII. n. 17.

The charters of incorporation, and other causes, had also Hen. VII.
 produced a considerable effect upon the cities and boroughs, by vesting more power in the hands of the heads of those bodies, and the select portions of them, who have since been called "the governing bodies." This tended to lay and confirm the foundations of those usurpations which then commenced, and which gradually increasing, have continued to the present day. It often happens, that the period in which the commencement of changes is to be traced, affords but slight indications of the insignificant origin of usurpations. Such is the case with this reign, which is not fruitful of documents to illustrate our subject; but we shall give them in the course we have before adopted, commencing with the statutes.

STATUTES.

It may not be an unfit introduction to these records to quote the words of Lord Bacon, who speaking of them, says, "that Henry VII. may be considered as the greatest English legislator after Edward I.; and this, because his laws (who so marks them well) are deep and not vulgar—*not made upon the spur of a particular occasion for the present*, but "out of providence for the future."

As a confirmation of the above observation, we find statutes providing for the regulation of merchant strangers born out of the realm, who being made denizens, enjoyed the same freedoms and liberties as denizens born within the realm—who being numerous, and carrying on a considerable portion of the trade, were too important a body not to be subjected to legislative restrictions.

1485.
Cap. 2.

Provisions are also made, by the 10th chapter, for the confirmation of the first of Richard III., chap. 9, respecting the regulation of the Italian merchants resident in the realm, and not being denizens; prohibiting strangers from hosting, or taking to sojourn with them, any merchant stranger.

Cap. 10.

In the eighth chapter of the third of Henry VII., there are other provisions relative to merchant aliens, and strangers.

1486.
Cap. 8.

Hen. VII. And the next chapter, relative to the trade of the citizens

Cap. 9. of London, speaks of the *citizens* and *freemen* having, time immemorially, traded to all parts:—but that the mayor, aldermen, and citizens (omitting the “term freemen”), had made an ordinance, that no man who was a *freeman* OR *citizen* of the city, should go to any fair or market out of the city: which is complained of for the injury it would do to the fairs and markets of other places, and to the realm generally;—and therefore it was enacted, that “every *freeman* AND *citizen* of London, may carry his wares to any fair or market—and that the ordinance shall be void—and that *no person of the said city* (the generality of which expression cannot escape attention) be hurt or prejudiced in losing *his* liberty and franchise within the city, by reason of the annulling of the ordinance, or for not obeying it.” The reader will remember, that the same expression of “*persons of the town,*” lately occurred in the charter to Wenlock;* and the interchangeable use of the terms, “free men,” and “citizens,” shows clearly that they were synonymous; nor can there be any doubt but that at that time, the freemen of London here spoken of, were, according to the definitions of the year book,† “*householders, resiant and taxable to scot and lot within the city.*”

Citizen of
London.

Many provisions will also be found during this reign, as in the former, against *retainers* and their *liveries*;‡ the restraint of which was rigidly enforced in one instance, as is said, at the suggestion of the king himself.§ And in several

Retainers.
Liveries.

* Vide ante, 1001.

† Vide ante, p. 699.

‡ See also 19 Henry VII., cap. 14.

§ The Earl of Oxford, the king's favourite general, having entertained him at his castle, at Heningham, was desirous of making a parade of his magnificence at the departure of his royal guest; and ordered all his retainers, with their liveries and badges, to be drawn up in two lines, that their appearance might be the more gallant and splendid. “My lord,” said the king, “I have heard much of your hospitality, but the truth far exceeds the report; these handsome gentlemen and yeomen, whom I see on both sides of me, are no doubt, your menial servants.” The earl replied, his fortune was too narrow for such magnificence: “They are most of them my retainers, who are come to do me service at this time, when they know I am honoured with your majesty's presence.” To which the king replied, “By my faith, my good lord, I thank you for your good cheer, but I must not allow my laws to be broken in my sight; my attorney must speak with you.” Oxford is said to have paid no less than 15,000 marks, as a composition for his offence.—Hume, vol. iii. p. 399.

of the acts in this reign, in the enumeration of the boroughs, cities, and towns, there is no reference to towns corporate, which became usual in subsequent periods. In the fourth chapter of the 11th of Henry VII., relative to weights and measures, the recital of the former statutes speaks only of cities—boroughs—and towns;—but the enacting part adds also, “towns corporate,” which is a strong circumstance to show, that that term had been introduced into common use subsequent to the previous statutes, particularly as it is omitted in the latter part of the act.

Hen. VII.

Cap. 4.

In the 10th chapter of the fourth of Henry VII., persons “inhabited” are spoken of; in contradistinction to merchant strangers.

1487.
Cap. 10.

In the fifth chapter of the seventh of Henry VII., which takes away the challenge, on the ground of the juror not having anything within the ward, the persons who were described as subject to be summoned, were “*sufficient persons dwelling or having livelihood within the ward.*”

1490.
Cap. 5.
London.

And in the second chapter of the eleventh year of this reign relative to vagabonds, they are directed to be put out of the town, and if not able to work, to resort to the hundred, where they last dwelled, are best known, or were born. This is in all probability the first legislative recognition of the obligation to permanent residence; which in modern times is described by the term “settlements;” and in the more ancient period of our law was connected with the provisions against vagrancy; and is strongly illustrative of the extent to which the doctrine of *residence* and *inhabitancy* was at that time carried.

1494.
Cap. 2.

In the ninth chapter of the same year, we have the distinction between the “*gildable*” and the “*franchises*” clearly marked with reference to North and South Tyndal, all the lands within which are declared to be *gildable*, and *parcel of the county of Northumberland*; and that no *franchise* should be there, but *all the king's writs and officers should be obeyed.**

Cap. 9.

* Lord Coke, in his commentary on the statute of Bridges, also contradistinguishes the franchise from the gildable, as he speaks of “*Bridges within franchises*, and “*those within the gildable.*” 2 Inst. p. 700. And in the questions submitted to

Hen. VII. From whence it appears, as we have contended before, that the substantial distinction between *boroughs* or other franchises and the *county* at large, consisted in the latter being gildable, or paying all together, in common; and the former being taxed by themselves—exempted from the jurisdiction of the sheriff—and having the *return of writs* within their exclusive boundaries. A similar distinction as to the gildable we shall find hereafter in the reign of Henry VIII. with respect to Wales.*

The subserviency of the companies to the general jurisdiction of the municipal government of the places in which they were situated, is in some degree established by one of the statutes of this year, which prohibits persons from
 Norwich. being worsted-shearers in Norwich unless they have served seven years' apprenticeship, or are allowed by the mayor and masters of the company;—and the worsted-shearers are restrained from making any ordinance but such as the mayor and aldermen shall think necessary.†

Cap. 21. In the 21st chapter of the same year, relative to the ability of those who were to be impannelled upon juries in
London London; the mayor's court—the sheriff's court—and the hustings, held before the mayor and aldermen, are mentioned; and the persons to be selected by the aldermen for jurors are described as “indifferent persons, citizens of the city, “*dwelling* in the ward;”—and the latter part of the statute speaks of the inquest by half-tongue, one-half of whom are to be strangers *inhabiting* within the city—which must refer to persons who had not remained there long enough to be liable to do suit at the wardmotes; and consequently to be enrolled as citizens, and subjected to scot and lot.

Cap. 23. In the 23rd chapter, cities, towns, boroughs, and markets are mentioned, but not corporate towns.

Cap. 26. In the 26th chapter, the sheriff's *tourn*‡ is expressly men-

the judges in 1633, there is a similar distinction noted between the *demesne lands*, and the *gildable* lands. See Dalton's Justice, p. 164.—Vide Jenk. 2 Cent. ca. 33.

* 27 Hen. VIII. c. 26.

† See further regulations as to the apprentices, 12 Hen. VII. c. 1.

‡ Vide etiam, 19 Hen. VII. c. 16.

tioned; and the lawful men *inhabiting* within its precinct, Hen. VII.
who owe suit there.

In the sixth chapter of the 12th of Henry VII., relative to
merchant adventurers, it is recited, amongst other things,
that the fellowship of the mercers, and other merchants and
adventurers, *dwelling* and being free within the city of Lon-
don, by confederacy amongst themselves, contrary to every
Englishman's liberty—to the liberty of the mart—and to
law, reason, charity, right, and conscience—had made an
ordinance, that none should sell without their consent, except
he first compounded and made fine to them, which had
increased from time to time, by reason whereof the cities,
towns, and boroughs had fallen into great poverty; where-
fore it was enacted, that all should freely sell, without any
exaction for their *liberty and freedom to buy and sell*:—which
seems to be the first legislative recognition of the *freedom*
to trade, of which we meet so many instances in different
boroughs, at subsequent periods.

1496.
Cap. 6.

Mercers,
&c.
Dwelling.

Freedom
to trade.

It is a striking circumstance, that at the same period in
which corporate powers were engrafted upon the ancient
police of the country, the usurpations of the corporations
then existing should have called for legislative interference.
As early as the 25th of Henry VI., the conduct of the
master, wardens, and the people of guilds, fraternities, and
other companies *corporate*, was complained of to Parlia-
ment, inasmuch as, by colour of rule and governance granted
and confirmed to them by charters and letters patent, they
had made amongst themselves many unlawful and unrea-
sonable ordinances for their own singular profit, and to the
common hurt and damage of the people; and they were, by
an act of Parliament, prohibited from doing so for the future,
except by the advice of justices of the peace and governors
of cities, &c. And that act having expired, and many ordi-
nances having been since made by divers private bodies
corporate, within the cities, boroughs, and towns, contrary
to the king's prerogative, it was enacted, that no such per-
sons should make any ordinances in disinheritor or dimi-
nution of the prerogative of the king, nor of any other; nor

1503.
Cap. 7.

Guilds,
&c.

Bye-laws.

Hen. VII. against the common profit of the people, unless examined by the chancellor, treasurer of England, or chief justice of either benches, or three of them, or before the justices of assise in their circuit.

It is also a more extraordinary circumstance, that by decisions of the courts of law, made as it would seem at the time when the modern practices and usurpations of the corporations were supported by the courts, on the ground of usage—that this wise and useful enactment was, in point of fact, rendered of no effect, by its being decided,* that this statute only prohibited the act under a penalty, but did not make the bye-law void; and this is the more to be regretted, because it was by the unrestrained power of making

Bye-laws.

bye-laws, that the greater portion of the abuses and usurpations of corporations were introduced: and which no doubt was the cause of the observation made by Hume, which is in no other sense true, that “one check to industry in England, was the creating of corporations: an abuse which is not yet entirely corrected.”

Cap. 8.

In the eighth chapter of the same year, relative to shewage and scavage, the merchants and *inhabitants* of cities, boroughs, and towns are mentioned; and it is added also, that divers tenants of the king (no doubt meaning tenants in ancient demesne), and of others, who have by grants under certain names by which they have been *corporate*, as also by grants made by divers lords, both spiritual and temporal, and by prescription, they, their tenants, resiants, and *inhabitants*, within their several lordships, boroughs, and towns, are discharged of tolls, &c., which are demanded by divers mayors, sheriffs, bailiffs, and other officers of cities, boroughs, and towns, for their singular lucre:—the like is prohibited for the future, and all persons are allowed to sell freely.

Corporate.

It is worthy of observation, that although in this charter, cities, boroughs, and towns are repeatedly mentioned, yet towns *corporate* are not alluded to; notwithstanding there is a direct reference to other corporate bodies.

The grant of a guild merchant, or hanse, has been so

* 5 Coke, 63 B; 1 Ro. Ab. 363.

often supposed to be peculiarly connected with borough Hen. VII. rights, and the maintenance of select bodies, as contended for by Dr. Brady, that it is worth while to mention the 23d chapter of the 19th of Henry VII., as explaining what the merchants of the hanse really were. They are there described as the merchants of the Hanse of Almain, having a house in the city commonly called “Guillhallda Teutonicorum.” From which it is clearly impossible to suppose, that this house, or the guildhall, had any thing to do with the municipal government of the city; but it was, as we have so frequently observed before, a matter perfectly distinct from the city and borough rights—dependent upon usages peculiar to such institutions—and altogether distinct from the county and borough jurisdictions established under the common law.

CHARTERS.

In collecting the charters of this reign, we find one only granted to the city of *London*, which merely relates to the buying and selling by *strangers* within the liberties of the city. London.
1485.
Strangers.

There is also, in the third year of this reign, a confirmation to the city of *Bristol*, of the charter of Edward IV., treating the former grants to the *commonalty*, as if made to the *burgesses*. Bristol.
1488.

The king further granted, in the 15th year of his reign, to the mayor and *commonalty*, their *heirs* and successors, that there should for ever be six aldermen: the recorder being one of them; the five remaining being elected by the mayor and common council of the town; the aldermen having the same powers and jurisdiction within their liberties as the aldermen of the city of London.—That the mayor and aldermen might remove any of the five aldermen, or supply vacancies from the honest *burgesses* of the town; and that they should be justices of the peace, with the customary powers; the mayor and *commonalty* having all fines without account—and no other justices interfering within the liberties. A chamberlain is then appointed, to have a seal of 1499.
Aldermen.
Non-in-
tromit

Hen. VII. office, with the same powers, &c. as the chamberlain of
 1499. London; and with authority to sue and be sued, receive rents,
 keep charters, &c., and to make an annual account. That the
 bailiffs should be elected as formerly, with their accustomed
 Sheriffs. powers; and to be *sheriffs* of the city and county as well as
 County- bailiffs; that they might hold *county courts*, and have the
 court. same power as other sheriffs; and that all *writs* should be
 Writs. directed to them. That the mayor and two aldermen should
 Cogni- have *cognizance* of pleas, trespasses, covenants, &c.: and
 zance. be enabled to choose, by the assent of the commonalty, forty
 40 Men. men of the better and honester *men* of the town, who, with
 the mayor and two aldermen, might make ordinances for the
commonalty, with power to levy taxes, and punish refrac-
 tory persons. That the mayor and two aldermen should
 have power to levy fines, &c., and the mayor to receive pro-
 bates of wills. That the mayor and aldermen might hold
 the same court which the mayor and sheriff used to hold:
 the mayor and *commonalty* having all fines without render-
 ing any account. That the mayor and *commonalty* should
 have power to appoint a water bailiff: and that the mayor
 Justices. and aldermen should be justices of gaol delivery, but that
 the fines and forfeitures, before justices of gaol delivery,
 should be reserved to the crown. That no grants theretofore
 made to the mayor, commonalty, or their predecessors,
 should be counteracted by any statute, act, &c. published to
 the contrary.

This charter, for the first time, creates six aldermen, of
 whom the recorder was to be one: and the remaining five
 were directed to be elected by the mayor and common coun-
 cil; which, as they purport to be new officers, the king
 might legally do:—for if he appoints five new officers, he
 may direct by whom they should be elected; and if he does
 so by a charter which is accepted, it would be binding, not-
 withstanding the previous charter of the 47th Edward III.
 was confirmed by Parliament.

The latter charter is not, in this respect, inconsistent with
 the former, but is in furtherance of it, and superadded to it:
 as for instance, making the aldermen the justices of the

peace; for which there was no provision in the former charter, and which had probably become necessary, in consequence of the power of trying indictments having been taken away from the court leet, by the statute 1 Edward IV. Neither was there any such officer before appointed as chamberlain;* and therefore the mode of electing him, prescribed in this grant, might stand, notwithstanding the former parliamentary confirmation. It should be observed, that this charter appears to assume the binding effect of the parliamentary confirmation; and that the king had no longer any power to alter the former modes of election, because where there was any previously existing mode of election, as in the case of the bailiffs, the charter does not purport to alter it.

Hen. VII.
1499.

It is true, that it appoints the two bailiffs to act as sheriffs in the place of the former single sheriff; and directs that the court of pleas should be held before the mayor, and two aldermen appointed by the mayor, instead of the sheriff, as directed by the charter 47th Edward III.: and therefore we conceive this to be contrary to that charter; and consequently, upon the principles we have mentioned before, illegal, and not to be supported.

So also the election of the 40, by the mayor; and the two aldermen appointed by the mayor, with the assent of the commonalty instead of the mayor and sheriff, with the like consent, is, on the same ground, insupportable; particularly as it appears afterwards, that the ordinances were assumed to be made by the mayor and aldermen, without saying any thing of the sheriff and 40 men, whose attendance was required by the charter of the 47th Edward III. The clause, substituting one of the aldermen to be appointed by the mayor in the place of the sheriff, for the purpose of holding the court with the mayor, is for the same reasons invalid.

It is not surprising that this charter should have been granted, notwithstanding it was inconsistent with the previous parliamentary confirmation, because the dispensing power was freely exercised by the crown at the time of

* Vide ante, p. 827.

Hen. VII. its being granted; and indeed there is at the end of the charter a clause of exemption, supposed at that time to be valid.

UNIVERSITY OF CAMBRIDGE.

There are two or three documents relative to the *University of Cambridge*, which occur in this reign, and which it may be material to mention. Thus it was declared by an
 1501. indenture of the 17th Henry VII., with reference to the disputes which had existed between the university and the burgesses respecting their jurisdictions, that, if any doubt happened as to the interpretation of any article of arbitrement made between the university and the town concerning their jurisdictions, liberties and privileges, that it should be declared by the chancellor and treasurer of England, and the chief justices of the King's Bench and Common Pleas for the time being, or three or two of them.

It was also awarded, as appears by an instrument of the same year, that the mayor and bailiffs should have all pleas before them of all contracts of victuals, bought to be spent by the buyer, between burgess and burgess, and between *burgess* and *foreigner*, wherein any burgess is plaintiff. And the chancellor (besides where any scholar, scholar's servant, common minister, or their servants, is party), should hold plea of victuals between all *foreigners*, and between burgess and foreigners, where foreigners should be plaintiffs. And that concerning victual bought and sold by the way of merchandise, the pleas should be holden before the mayor, except a privileged person be a party. And that other personal pleas (other than for victual, where a burgess, or foreigner *dwelling* within the town, should be party; and no privileged person by the university should be party), should be holden before the mayor. And if such privileged person be party, then to be holden before the chancellor. And in all actions personal between foreigner and foreigner, both parties *dwelling* out of the town, the parties to be at liberty to sue where he will.

The mayor also claimed to have the correction of all
 Leets. nuisances at the leet; if amendment were not had within

six weeks after every leet. But if it be in default of a scholar, then the chancellor should have the punishment, correction, and amercement of them that made such nuisance, and the reformation of the same. Hen. VII.

It was likewise awarded, that in frays made with the town or university, wherein a scholar, or scholar's servant should happen to be party, the chancellor should have the punishment and correction thereof, and also the amercements.

And, lastly, it was awarded, that scholars' servants *dwell-ing* not within the town, should not be privileged. And if any scholar, scholar's servants, common minister, commit any murder or felony, they should be attached and amerced, according to the common law, without disturbance of any privileged person in the university.

SOUTHWOLD.

In chronological succession, we have arrived at the period when a grant was made by the king, with the consent of Parliament, to the town of *Southwold*;* which place, from its peculiar circumstances, particularly with reference to the neighbouring borough of Dunwich, will require our particular attention; and having give a few charters and facts connected with it, we shall conclude with some observations, and compare its history with that of Dunwich.

Southwold is not mentioned in Domesday as a borough, nor are there any ancient records relative to it, which will enable us to trace its early history. But in the fourth year of Henry VII. the following entry occurs upon the Parlia-
ment Rolls,† reciting, “that many great variances had been
for a long time between the baillies and commonalty of
Dunwich, in the county of Suffolk, the which is a *town cor-
porate* on the one partie, and the *inhabitants of Southwold*,
of the same county, which is a town *not corporate*, on the
other partie. Which town being wi' in the space of eleven
miles, the bailiffs and commonalty claimed of every ship of
the *inhabitants* of Southwold coming into the haven of Dun-

1488.

Dunwich.
Corporate.

* The ancient names of this place were—Suwald, Suwalda, Sudholda, and Southwood.

† Rot. Parl. p. 431.

- Hen. VII. wich between the same towns, 6s. 8d. yearly; and of every
 1488. boat of 12 oars of the inhabitants yearly, 4s.; and of every
 boat of 11 oars of the inhabitants yearly, 2s.; and also of
 every ship yearly, for anchorage in the same haven, 4d. All
 Inhabitants which the *inhabitants* of Southwold denied, saying, they
 ought not any such charges to bear. Nevertheless, as well
 the bailiffs and *commonalty*, as the *inhabitants* of Southwold
 accorded, that the *inhabitants* and all their *successors*, and
 other inhabitants hereafter to be in the town of *Southwold*,
 and every of them, and their ships, &c. should be utterly
 discharged of all the said customs. The king our sovereign
 lord, considering the said accord to be cause of continued
 peace of both, and willing therefore that the same accord
 should be put in perfect surety of perpetual continuance, it
 was enacted, &c. that the *inhabitants* of the town of South-
 wold, then being or thereafter to be, from thenceforth should
 be *one body* and *one commonalty*, and that the same town be
 Corporate a town *corporate* of *two baillies* and commonalty for ever-
 Name. more, and by the name of "baillies and commonalty" should
 Plead. plead and be impleaded, answer and be answered, in all
 manner of actions, suits, quarrels and causes; and by the
 Purchase. same name purchase and receive lands, tenements and here-
 ditaments, &c. The charter then names two persons as bailiffs,
 Elections. and proceeds to grant, that yearly, or at any voidance of the
 Common- place of any of the bailiffs, the commonalty of the town
 alty. assembled together, should choose two bailiffs of themselves
 from year to year and time to time for evermore;—and that
 the same two bailiffs and commonalty of Southwold, and
 every inhabitant then being or thereafter to be of the town,
 and their successors, and every ship and boat of them, should
 be from thenceforth for evermore quit and discharged from
 the customs before claimed of any of the inhabitants of the
 town of Southwold by the said baillies and commonalty of
 Dunwich and their successors; as well against the king our
 sovereign lord as his heirs kings of England; as against the
 bailiffs and commonalty of Dunwich, and their successors;
 and against every inhabitant of the same town then being or
 thereafter to be.

And this act was in the next year, at the request of the inhabitants of Southwold, duly exemplified, approved of, and confirmed by the king; who considering that the town was upon the sea coast, and that the shipping of the *inhabitants* had excelled that of the other more ancient privileged towns in the neighbourhood, yet upon account of the want of wholesome ordinances, the *inhabitants* had suffered many losses; the king, wishing to supply a remedy, granted to the bailiffs and commonalty, and their successors, the king's manor or lordship of Southwold, and all lands or tenements in the same town, &c.

Hen. VII.

1489.

Inhabitants.

The same king, in the 20th year of his reign, also granted another charter to Southwold, which, after confirming the previous parliamentary grant and charters of Henry VII., commences with a recital, the same in effect as the last, and gives to the bailiffs, commonalty, and their successors, the manor, lordship, and town of Southwold, &c. with a court leet and view of frankpledge, to the same belonging, upon receiving the annual payment of 14*l.*; and that they should have and hold twice every year one leet or view of frankpledge within the town, before the *high steward* of the town, or his deputy; that they should have the amendment of the assise of bread and beer, and the punishment of the same; and the whole and whatsoever belongs, or ought or can belong to the view of frankpledge, with the profits of the same; together with the goods of felons, and wrecks of the sea. That they should have two fairs annually, and two weekly markets. That the bailiffs and commonalty might appoint a high steward; that they might hold a weekly *court of record* before the chief steward, or his deputy and the bailiff, with cognizance of real and personal actions arising within the town. That the high steward with the two bailiffs should be justices of the peace; that they might have a coroner—the *return of all writs*—and a gaol. And that the bailiffs should have an admiralty jurisdiction, and no other minister whatsoever should introumit.

1504.

Manor.
Town.
Court leet.
Frank-pledge.High
steward.High
steward.
Court of
record.

Justices.

Coroner.
Return of
writs.Non-
introumit.

The grant and charters to Southwold were successively

Hen. VII. confirmed by Henry VIII., Edward VI., Queen Elizabeth, James I. and Charles I.

James II., in the first year of his reign, made also a grant to the bailiffs, as it is stated, for the improvement of the town, and for the purpose of *enlarging* their *privileges*; professing also to make it a free borough, and *to incorporate* the *inhabitants*; with the usual corporate powers, and the grant of 12 aldermen; (two of whom are to be bailiffs)—a recorder—town clerk, and serjeants-at-mace.

The persons who are first to fill those offices, are respectively named; the power of having a common hall or guild is given; with the annual election of bailiffs; and a power of supplying vacancies in those respective offices; and for the recorder to make a deputy. The inferior officers of the town, who before were elected by the bailiffs and *commonalty*, are to be elected and sworn as they had been for the last seven years.

The charter then contains the power, usual in grants of that reign; that the bailiffs—recorder—aldermen—town-clerk—and serjeants-at-mace, might, by any order of the king in council, be *removed*.

The objectionable nature of this clause was felt throughout the country, and generally rejected at the time. Since which, as we have observed before, it was, by the Court of King's Bench, in the case of the *King v. Amery*,* declared to be in itself void; and some doubts suggested, whether such a provision would not have the effect, upon the ground of its illegality, of rendering the whole charter invalid. At all events the inhabitants of Southwold appear to have partaken of the common feelings of the time, and to have renounced this charter. As no charter of the crown can take effect unless it is accepted by those to whom it was granted, this charter was altogether inoperative; for the inhabitants never accepted it; as is proved by the fact, that none of the officers given by it have ever been appointed: there are neither aldermen nor recorder. But the town has continued under the high steward and bailiffs appointed by the charter

* 1 Term Rep. p. 363.

of Henry VII.; and has been subject to the jurisdiction of Hen. VII.
the court leet, according to its original jurisdiction. 1504.

The non-acceptance, and consequent inoperativeness of the charter of James II., is further proved by the charter in the next reign by King William and Queen Mary, which contains by *inspeximus*, and confirms, all the former charters, excepting that of James II.

This closes the documents which we possess with respect to Southwold; it only remains to add the facts which occur after these grants, and to mention the present state of the town.

Southwold never was a parliamentary borough, and had nothing to boast of, but its separate jurisdiction from the county; which was given to it by the act of Henry VII., and under which it has been most effectively governed to the present day:—affording one of the best specimens of the practical effect of our ancient institutions, whilst unperverted and unabused, that is to be met with in the kingdom; scarcely presenting an instance of a criminal trial, or a civil law suit, for many years. Property is respected, and protected, by the local administration of the law: and order and good government preserved in the most exemplary manner under the local authorities.

Other places may perhaps vie with it in this particular, but the observation is material with respect to Southwold, because as there has been no temptation, for parliamentary or political purposes, to pervert or abuse its exclusive privileges, they have continued in their original, unaltered purity; and consequently their efficacy can be distinctly ascertained.

It was, according to the opinions and fashion of the day, declared, in the reign of Henry VII., to be a body corporate, *Corporate.* with the usual corporate powers; but this, as we have frequently had before occasion to observe, produced no other effect than to give them the power of legally, and under the authority of the law, doing that which aggregate bodies had done from the earliest periods of our history:—although the principles connected with the existence and conduct of

Hen. VII. aggregate bodies had not been fully developed or defined, viz. that of taking and holding by succession—suing and being sued by their aggregate name—and acting under a common seal.

The charters also, in conformity with the early grants of immunity and exemption, discharged all the *inhabitants* of Southwold from all customs payable to Dunwich, or to the king. These were all the privileges given to them by the first parliamentary grant. But the same king, in the 20th year of his reign, gave to them by his charter that exclusive jurisdiction which they at present enjoy, by granting to the inhabitants the manor—the town—and a court leet, and view of frankpledge, with the usual powers; likewise the assise of bread and beer, and the goods of felons and fugitives, which exempted them from suit at the sheriff's tourn: and thereby in effect excluded the sheriff's jurisdiction; the bailiffs and the commonalty paying to the king out of the profits of the court leet and town, the yearly sum of 14*l*. All of which the king had full power to do; for inasmuch as the profits of the town belonged to the king, he had the full right to dispose of them:—and as they were before collected by the sheriff as his officer, so could the king direct that for the future they should be received by the bailiffs and commonalty—they accounting for them in such manner as the king should direct; which was, that they should account for 14*l*. out of them, retaining the rest for themselves.

So also, as the suit at the sheriff's tourn was suit royal, due to the crown, the king, as the head of the executive government, had by his prerogative the power of appointing when and where, and how, it should be done; subject only to the legislative regulations which had been from time to time declared by statute. The king, therefore, in adding to, or subtracting from any shire, regulated the places over which the sheriff's tourn should have its jurisdiction.—Or if he thought fit, for the better execution and administration of the law, that the suit royal should be done within any more limited district than the county at large, he appointed a

court leet, and view of frankpledge within that district—as Hen. VII. he did for the town of Southwold; the wisdom of which is best proved by the fact, that it has, ever since, been well and effectually governed under that jurisdiction—which, as there was no temptation to abuse, has remained uncorrupted and unperverted. Whereas, if such an exclusive jurisdiction had not been given to it, distantly removed as it is from the shire town, it would, in all probability, have been neglected or misgoverned.

As a part of the same system, a high steward was also appointed, whose duty it was to preside at the *court leet*; and who has continued to do so to the present time. Leet.

That court gave cognizance of criminal matters: and to complete the exclusive jurisdiction, it was necessary for the bailiffs and commonalty to have a *court* for the trial of civil causes, which was accordingly granted with full cognizance; and also that it should be a court of record; to be held by the chief steward:—which was practised for a long period, to the considerable advantage of the inhabitants. Court of Record.

Serjeants-at-mace were also granted, for the execution of the process of the court. And that there might be no necessity for removing the presentments or indictments found at the court leet, according to the statute of the first of Edward IV., the bailiffs and the high steward are appointed to be *justices* of the peace, to hear and determine all matters within the lordship, manor, and town; and the justices of the county are, by a *non-intromittant* clause, excluded. Justices.

And that no other officers of the crown might interfere within the jurisdiction, power is given to the bailiffs and commonalty to appoint a *coroner*, who, to the exclusion of all others, was to execute the important functions belonging to that office. Non-intromit. Coroner.

With the same view of completing the exclusive jurisdiction, the *return of writs* is granted to the bailiffs and commonalty, and the power of having a gaol; and though somewhat foreign to our present inquiry, it may be as well to note, that an admiralty jurisdiction is given to the town; and all other jurisdiction of that kind within the precincts is excluded. Return of writs.

Hen. VII. So that it is impossible to doubt that this, comparatively speaking, modern charter, had also for its object, that which we have noted from the earliest periods—the establishment of a jurisdiction separate from the county, and exclusive of the sheriff—the peculiar characteristic of a borough—but not of corporate privileges.

Dunwich. This latter observation naturally leads us to the comparison of the case with Dunwich, which is most erroneously stated in the parliamentary grant to be a town *corporate*; as contradistinguished from Southwold, which is stated *not to be corporate*. We have before shown the successive charters to Dunwich*—three in the reign of King John—one in the reign of Henry III.—with confirmations in the reigns of Edward I., Edward III., Richard II., Henry VI. and Edward IV. None of those were charters of incorporation: but in substance the same as that granted to Southwold; granting exemption from suits at shires and hundreds, and giving the usual privileges which freemen enjoyed, of holding their lands in free burgage—of devising and selling them—of free marriage—and as a proof that they were not incorporated, it should be noted, that those grants were to them and their *heirs*: the great object of them being, like that to Southwold, to give an exclusive jurisdiction within the place; and to exempt the burgesses from all jurisdiction without it.

Exclusive jurisdiction.

The charter of King John to Dunwich contained the provision, (applicable to those times,) that *natives* dwelling there, and being in scot and lot for a year and a day, should be *freed* from their lords. No such provision is found in the charter to Southwold:—which might on the first impression create surprise. But it must be recollected at what period that charter was granted: and although villainage was in existence in the reign of Henry VII., it was then beginning to be disregarded, the great bulk of the people being free; and there were, after this time, few instances of villainage being enforced. Hence these provisions respecting the enfranchisement of villains became

Villainage.

* Vide ante, pp. 402—404.

unnecessary ; and a new description of the persons to whom these privileges were granted was introduced : still, however, confining the objects of the charter to those living within the privileged district. By these means the term "*inhabitants*" gradually crept into use in these documents, Inhabitants as the most general mode of describing those who were to enjoy the liberties within the local limits.* Instead, therefore, of the terms which had been adopted in the more ancient charters, and the provisions respecting the emancipation of the freemen, the more general term of "*inhabitants*" was used in the Southwold charter ; and it should be remembered, that the "*inhabitants*" are, by the express and unambiguous terms of the charter, incorporated. Accordingly, therefore, we find that the liberties and privileges of the place have always been enjoyed by them ; and they continue to this day as the commonalty, to join in the elections ; and in that character alone to exercise all the franchises given by the charter, although, in some few instances, in mistaken analogy with the ancient law, which was inapplicable to them, they are in the records of the town, called freemen.

Besides the above act relative to Southwold, from the Parliament Rolls, there is a reservation, out of the general statute of resumption by this king, of the manumission of villainage or neifty granted by him, or any former kings. 1485. Villainage.

Amongst the miscellaneous records of different boroughs, we find, in the books of *Southampton*, mention made of the *law-day*, or *court leet*, held at Cut-thorn, in the first year of this reign. Southampton. law-day. 1486.

In the records of *Lyme*, a *burgage* is mentioned, as granted by the burgesses, at the rate of one penny and fealty. And another is surrendered to the burgesses, with a condition that the tenant should be released from suit and service. Lyme. 1491. Burgages. 1499.

* Vide etiam, post. temp. Edw. VI.—bill for making the *inhabitants* in cities, boroughs, and towns, contributory in scot and lot with the citizens and burgesses.

Hen. VII. Amongst the documents relative to Yarmouth, we find, in the 13th year of this reign, a singular ordinance, describing the method adopted for the impartial nomination of the leet jury, who were to elect the annual officers. It is as follows:—

1497. 22d August. Ordinance as to the business to be transacted on the 29th of August, called St. John's day.

Ordinance. 1st. At the common assembly yearly to be holden in the common house, for the election of bailiffs and other officers, after the old laudable custom of the town, time out of mind used, every of the 24, and every of the 48, being within the town, all excuses avoided (sickness and other right special causes only excepted) shall be present, without any warning to them to be made, upon pain that every one of the 24 that shall fail there, and be absent at 9 or 10 of clock at farthest before noon that day, of 20s.; and every one of the 48 that shall fail and be absent in like form upon pain of 10s., to be forfeited and received without delay, *to the common use and profit of the town*; and that none of them absent nor withdraw themselves that day out of the town purposely, without great cause, upon the said pains.

2d. Also it was ordained, that at the denomination and agreement of the bailiffs, and the 24 for the time being, at the said assembly, shall yearly be written of every leet, nine names of the most discreet, well-disposed, and indifferent *persons* of the said 48 then present in the house. And for default of that number of the 48, then to name other well-disposed *persons* then present. That the said nine names written of every leet be put in four caps—every leet by itself; *those persons that were on the election the last year preceding excepted*, according to the old ordinances. And all four caps to be brought before the bailiffs, and then an innocent, or a man not lettered, to be called, and he to take out of every cap three bills, and lay them down before the bailiffs. And then 11 to be called, charged, and sworn, after the old custom of the town. And the 11 persons so charged shall choose the officers for the year next ensuing, that is to say, two bailiffs, two chamberlains, two church-

wardens, two managers, two collectors for the half doles, Hen. VII. eight discreet and sufficient wardens for awarding of herrings, and four auditors; the which auditorys shall be two of the 24, and two of the 48; and that they be of the most wise and discreet men, that have best skill to take account. And if nine of the 12 so sworn be accorded, and the other three be not agreeable to them, the verdict of the nine so accorded shall be received, and the election shall stand in effect.

Before we altogether pass on from this important document, we should call the attention of the reader to the fact, that the penalties which are to be paid for absence from the yearly assemblies, are to be taken for "*the common use or profit of the town*," forming, therefore, a part of that *common stock* out of which the general pecuniary burdens upon the place, whether of murage, portage, chiminage, the support of the sick and impotent, or otherwise, were to be paid.

And it must likewise be remarked, as a principle important to be kept in view, that those who had previously acted as jurymen, were, in consequence of such service, to be excepted from serving again.

In the chamberlain's accounts for Yarmouth in the same reign, the *fin*es of many persons *admitted* into the liberty are mentioned. In the margin of the Roll they are described as "elected;"—which term, in modern times, is supposed to mean, election at the mere will of the electors: but in the more correct and legitimate sense of our ancient laws, and according to the purity of our early institutions, it meant, election according to sound discretion, and a conscientious view, under the sanction of an oath, of the circumstances which should guide the discretion of the electors;—thus the persons nominated in the manner described in the ordinances before quoted, would not have the unrestrained power of electing whom they thought fit, as bailiffs, chamberlains, &c., but would be bound, under their oaths, to elect those who were in truth the most fit to be elected, and in the ordinary course of rotation; so that the executing those offices might, in due turn, equally be imposed upon all.

The capital *pledges* at the respective *leets* are again men- Capital Pledges.

Yarmouth
Rolls.

Election

tioned in this reign, as in the former;—and many persons are entered as *sworn* in the *decenna*;—many are *presented*, as having bought and sold as *burgesses*, who were not so; and they are therefore amerced;—many are also *presented*, because they occupied open shops as *burgesses*, and were not so.

Some are *presented* because they kept *apprentices*, contrary to the liberties of the town.

About the same period some are fined because they are not *sworn* in the *tything*: and others because they were of the age of 12 years and more, and remained within the precincts of the *leet* for a year and a day, and refused to be sworn in the *decenna*. Foresters are also amerced:—and some persons are presented, as being fit to be burgesses. Upon the general effect of the several classes of these presentments we have before made comments, which it is not here necessary to repeat.*

Amongst the documents of *Wells* of the ninth year of this reign, there appear articles by the bishop against the city; one of which charges them with making burgesses, which it was alleged belonged to the bishop; the answer was, that they had made burgesses for 300 years: a circumstance highly probable, considering the entries we have before given with respect to this borough; and that in this same reign there are entries of the same description “pro ingressu habendo in libertatem,” and one person is “discommoned” for refusing to attend at the convocation.

An ancient document relative to *Stafford*, contains the following ordinances made in this reign, showing how carefully the performance of all public duties was at that time secured, by the oaths of the parties who were obliged to perform them. It also establishes that the burgesses of Stafford were, as we have shown in other boroughs, “the inhabitant householders residing within the place.”

It is as follows:—

* See before, pp. 753, 796, 828.

"Hereafter ensueth certain ordinances and establishments, made at Woodstock, the sixth day of February, in the 16th year of the reign of our sovereign lord, King Henry VII., by our said commons, lords, and great council, for the good rule of his town of Stafford, the burgesses and *inhabitants* of the same.

Hen. VII.

Ordinance.

Inhabitants.

"First.—That the 25 of the council of the town of Stafford, at the election of the bailiffs, do name four of the said 25; and that no burgess of the town abide or remain within the house, till the 25 have made the said election and nomination. And that done, the residue of the 25, with the other burgesses of the town, to choose two of the four to be bailiffs for the year following. And that no burgess have any voice in the said election, nor be present in the same, except he be a *householder* and *dweller* within the franchise of the same.

Householder and
resiant.

"Item.—That the two bailiffs, and every of the said 25, that now be of the council of the town, on this side the 26th day of this present month of February, assemble in the common house of the town, and do make this oath following :

"I shall be faithful and true, and faith and truth shall bear to the king. I shall nothing do, nor attempt, that may be hurtful or prejudicial to his highness, or his heirs; and if I shall know any such thing done, or attempted to be done, I shall let it to the best of my power, and in all haste to me possible, show it to his grace, his heirs, or such of his council, as it may come to his knowledge. I shall be retained with no person, of what condition or degree soever he be, by oath, livery, fee, indenture, token, cognizance, promise, word, or by any other manner of ways, and do no service to no manner of man, but only to our said sovereign lord, and his heirs, except only such service as appertaineth to my occupation or craft, so help me God, &c.

Oath.

"Item.—The said two bailiffs and 25, shall at the same assemble and call before them, all the remnant of their comburgesses and *inhabitants* of the same town, and cause them and every of them to take and make the same oath; and all such as refuse so to do, to be committed to ward, there to remain till the king be advertised of their names and de-

Inhabitants.

Hen. VII. meanour in that behalf, and until they shall have knowledge of the king's further pleasure in the same.

- Oath.** “Item.—Every person chosen bailiff in time to come, shall the day of his election, before he depart out of the said house, not only make the said oath himself, but also be expressly sworn, that he shall cause every burgess made in his days, to take the same. And also, that all such as during his office shall, in any manner or wise offend against the said oath, calling to him the remainder of the council, if he be a
- Burgess.** *burgess*, he shall be put out and lose his burgess-ship, and be committed to ward, and suffer imprisonment by the
- Commoner.** space of 20 days; and if he be a *commoner*, to forfeit 40*s.* and like imprisonment, and not to be delivered till they have found sufficient sureties by obligation, to be of good obeisance in time to come.
- Dwelling.** “Item.—That no manner of person *dwelling* within the said town, except the bailiffs and their officers, from henceforth bear any bill, club, pitchfork, spear, sword, buckler, or other unlawful weapon, except he be going out of the same town for his lawful business, or returning home into the same, upon pain of forfeiture of the same weapon, and also imprisonment of his body by the space of six days, for every time he shall be so taken.
- Foreigner.** “Item.—That no *foreigner*, of what estate, degree, or condition he be, resorting to the said town, at any time from henceforth, presume or take upon him to bear any unlawful weapon within the town, after he shall have taken there
- Lodgings.** lodgings; but the same weapon to leave in his lodgings unto such time as he shall depart out of the town, upon pain of forfeiture of the weapon, and further imprisonment, after the discretion of the bailiffs with the council of the same town.
- “Item.—That if it shall hereafter fortune the king's grace, to send to the said town for any of his subjects of the same to attend upon his grace, and do him service of war, that then the same his subjects be ruled and conveyed unto his grace, by the bailiffs of the same town, or such another able man of the said 25 of the council of the said town, as by the bailiffs and the said 25 shall be thought most necessary for

the same; in witness whereof, our sovereign lord hath signed this ordinance with his hand, and commanded his privy seal to be put unto the same." Hen. VII.

A distinction is expressly taken in this document, between the "burgess" and the "commoner;" and it appears evidently that it consisted in the former having been duly *admitted, enrolled, and sworn*, as a burgess; and the latter not having conformed to those requisite acts, which the bailiff is here distinctly called upon to enforce.

And taking the whole document together, it is clear, that as the inhabitant householders dwelling in the place were the "*burgesses*,"—so the "*foreigners*" were those who were only *inmates or lodgers*, residing merely temporarily, and not having houses.

In the books of the borough of *Marlborough* of this reign, it appears ~~that~~ the proceedings at meetings of the burgesses, called the "morrow speech," that the burgesses and denizens who *dwelt* within the town, were not to sue without the town. And an ancient document of the same period shows, that the "burgesses," "tenants," and householders were all synonymous, and imported the same body—which indeed is clear from this, that the householders, could not but be tenants; and the burgesses as suitors at the court leet, (which it appears from the records, was at that time held in the borough), could not but be resiants, and consequently occupiers of houses in the borough; and therefore, tenants, householders, and burgesses, were in fact all the same. Marlborough.
1501. \
Morrow-speech.

ELEVENTH YEAR BOOK.

As the statutes, and charters of this and the preceding reigns have clearly established that municipal corporations*

* Hume, vol. iii. p. 287. "One check to industry in England, was the erecting of corporations, an abuse which is not yet entirely corrected." It does not appear very distinctly what Hume exactly intended by this observation:—if by the expression he used he meant the erecting of boroughs, he was in error in attributing that fact to this period. If he meant the giving corporate powers to the burgesses, it had not the effect to which he alludes. And if he meant that the two united, that is, that the boroughs having municipal government, being incorporated, had the effect he suggests, he is altogether inaccurate; for there cannot be a greater

Hen. VII. were becoming general, (to which in a great measure Hume attributes the check which was then given to industry in England), we should naturally expect that the decisions of the courts of law would tend to establish the same point; and indicate on the face of their reports, an increasing number of cases of that description; and a more particular inquiry into the doctrine of corporations.

Accordingly we find in the Year Book of this reign, many cases illustrative of that head of the law.

Hunting-
don.
1486.
Fol. 17 B,
T. T.
Common-
alty. In a case in the second year of this reign, by the prior of Huntingdon against divers *men* of Huntingdon, for their entry upon seven acres of land, it was stated, that "the land was held of the bailiffs and *commonalty* of Godmanchester;" who alleged in themselves a "*corporation*" by prescription, and that their manor was ancient demesne.

Corpora-
tion. Here we find the term "*corporation*," adopted as if it was then in common use; and that the doctrine of corporations by prescription, was at that time asserted—of which this seems to be the first instance, as applied to a municipal corporation: although the same doctrine had long before prevailed as to ecclesiastical bodies.

So also the *doctrine of corporations by implication* seems, at this time, to have been entertained by the courts:—for in this year, it appearing that the king by his charter, had given licence notwithstanding the statute of mortmain, to a chaplain and his successors, to grant a rent issuing out of certain premises, it was in argument apparently admitted that this created a *corporation by implication*:—and although the case was not expressly determined upon that point, but other grounds, yet, in fact, it involved that admission.*

1487.
Fol. 11,
M. T. The corporate doctrine, as then received, with respect to ecclesiastical persons, and also in some degree as to municipal bodies, may be collected from the following cases.

The prior of Bath, whilst he was prior, entered into an ob-benefit to a country than such local jurisdictions, as well for the purpose of the local administration of the law, as for the local government of the people. His observation can only be true if directed against the *monopolies* granted to crafts and mysteries; or against the *usurpations* and *abuses* which, subsequent to this period, crept gradually into corporations.

* See 2 Hen. VII., 13 a, b, cited at length in Sutton Hosp. case, 10.

ligation without the convent ; and afterwards was elected ^{Hen. VII.} abbot of St. Austin, near Canterbury ; and an action was ^{1487.} brought upon the obligation.

Vavisour, Justice, said, when an obligation is made by a body politic, the body only should be charged :—as mayor and commonalty. For if the mayor be deposed, or his authority expire, then he shall not be charged : for he is severed from the body politic, and cannot be charged, except with the body. And so it is with the dean and chapter ; and in the case at the bar, each abbot is a body politic ; for he can take nothing except to the use of the house. And when he was elected abbot of another place, he was severed from the body politic of Bath.

All the other judges were to the contrary. And *Bryan* put the diversity between a mayor and commonalty, as a body politic, and a dean and chapter, abbot, and prior. Whenever it is wished to charge the mayor and commonalty, it is fit for both to be bound ; for if a man binds himself by the name of mayor and commonalty, the commonalty are not bound with him, for none will be charged, but he who makes the obligation. *The word “mayor” is of no effect.* And the goods of a commonalty cannot be taken in execution ; and so also it is as to a dean and chapter. But it is otherwise of an abbot or prior ; for they are bound notwithstanding the convent be not bound : and the house cannot be charged with respect to the prior ;—the charge will follow his person, because he was at all times personable to be sued.

A writ of trespass was also brought in the fourth year of this reign against the mayor and commonalty of *York*. It ^{1488. Fol. 13 B, T. T.} appeared that all the inhabitants had common on the land where the trespass was alleged, and therefore they placed their cattle upon it. It was said that this was no plea—that this action was brought against the corporation ; and the defendants justified as private persons, which was not to the purpose. For if an action be brought against a dean, and the fellows of a college, and they say the 12 persons make the college, and justify in their own right, it is no plea. So here, the trespass is assigned as against one person,

Hen. VII. that is, the body politic; and they justify as other persons :
 1488. and it was alleged to be no plea. It was also held, that a commonalty could not give a warrant without writing to commit a trespass.

It should be observed, that in this case the arguments, as to the rights and obligations of municipal corporations, are still borrowed from principles which had been before applied to ecclesiastical bodies; and in this and other cases the analogy and reasoning are usually taken from those institutions.

Fol. 17 B, It was likewise again held in another case, in the same
 M. T. year, that a body corporate could not make a feoffment lease, or any other thing of inheritance without deed; but it was at the same time decided, that as to those things which belong to service they could; as, the appointment and employment of ploughmen, servants of husbandry, butlers, and cooks, &c.

Misnomer. It will be apparent also from these reports, that the cases founded upon misnomers of corporations, became more frequent; and were decided upon more subtle grounds.

1495. Thus—in the 11th year of this reign—an assise was
 Fol. 28. brought by the name of “the master and wardens” of Runceval; and it appeared by the replication, that he was
 Incorporate. *incorporate* by the name of “master, wardens, brothers and sisters of Runceval;” and it was also shown, by the same
 Corpora- letters patent of *corporation*, that the king had granted
 tion. that they should implead by the name of “master and wardens.”

Keble.—The writ should abate; for it appears by the re-
 Corporate plication, that they are corporate by another name, than that by which the action is brought; that is to say, by the name of “master, wardens, brothers and sisters;” and each of those four are persons able to sue: for where one is corporate by the name of “abbot and fellow monks,” there no person is able but the abbot alone.* But here each of those four are persons capable—and thus it is of mayor and com-

* Here we still see that the illustrations of the corporate doctrine are borrowed from the cases of ecclesiastical persons.

monalty; for the mayor cannot bring an action without naming the commonalty. And as to its appearing that the king had granted that they should be impleaded by the name of "master and wardens," those words are void, for they are contrary to the incorporation. They ought to be impleaded by the same name by which they purchased. Hen. VII.

Wood.—It appears that the king has granted that they ought to purchase and be corporate by the name of "master, wardens, brothers, and sisters:" then they should not be impleadable but by that name. For those words render them impleadable; and they can only be impleaded by such name as the king gave them. But if the king wishes to grant to bailiffs that they should be impleaded by the name of "mayor"—or by the name of "good men"—that is good.

Keble.—If the king did not grant to them that they should be impleaded by the name of "master and wardens," they would be impleaded by the name of "master, wardens, brothers, and sisters," according to the first words of incorporation.

Brian.—By whatsoever name the king grants, by that name must they plead and be impleaded, as in the case of Windsor and other cases.

In a case of trespass, brought in the 13th year of this reign, by the dean and chapter of Poole, it was said, "that a 'dean and chapter'—'mayor and commonalty'—are bodies politic." And it is from this passage, that much of the loose doctrine adopted by Brady and other authors, as well as in modern cases, has been borrowed. It is true that "deans and chapters" always were incorporated, by the principles applied to ecclesiastical bodies from the earliest times, as we have abundantly shown. And it is equally true, that "mayor and commonalty" were always bodies politic:—but they were not always incorporated; as we have likewise distinctly proved by documents and authorities from the earliest periods. Overlooking however these distinctions, it has been erroneously assumed, and supposed to be supported by this passage, that mayor and commonalty always imported a corporation—an error 1496.

Hen. VII. which we trust has been removed by the records we have produced, and the progress of the history we have traced.

Misnomers Other subtle distinctions upon supposed misnomers, occur in subsequent cases; where, notwithstanding the suggested variances in name, the bodies were clearly in substance the same. But the misnomers were still insisted upon. And in the course of one of the arguments, "mayor and commonalty" seem to be considered as not necessarily incorporated—but in some instances, importing, as we before pointed out, unincorporated separate persons.

1497.
Fol. 14 B.
Oxford.
Incorporated.
In an action of trespass, brought by "the mayor and bailiffs" of Oxford, it was objected by the defendant, that they were *incorporated* by the name of "mayor and burgesses" of Oxford, and not by the name of "mayor and bailiffs."

"*Brian*.—The plea is good; for it is said in the Book of Assise, that in an action brought in the name of 'the mayor and commonalty,' the defendant insisted, 'that they were persons separate, and not incorporate by that name.'

"*Wood*.—It seems that the plea is not worth any thing, without showing the letters of incorporation.

"*Keble*.—Perhaps they have been accustomed, from time immemorial, to sue and be sued by that name."

Misnomer. In the following case there is a similar reference to the doctrine of misnomer, by which it was said even to extend to make a confirmation void, where the name of confirmation differed from that in the original grant.

And in the same case, municipal corporations by prescription are assumed to have existed:—but we have already shown to demonstration, that there were none such, in point of fact.

It will likewise be perceived that the doctrine of forfeiture by non-user is also incidentally introduced.

Fol. 1,
M. T.
In a quare impedit against the mayor, bailiffs and burgesses of B., it was said by *Vavisour*, that if a town be *corporate* by letters patent of the king before time of

Non-user. memory, and those franchises have not been *used* since time

of memory, they have lost their franchise. And it was also Hen. VII. said by *Brian* and *Wood*, that if a rent-charge be granted before time of memory, and no distress or possession had been taken within time of memory, the grantor and his heirs are without remedy to recover this rent. And also, if a town be *corporate* by the name of "mayor and bailiffs," and since Misnomer. they have had a confirmation by the name of "mayor and burgesses," the confirmation is void.

It is needless to cite more cases in this reign illustrative of the doctrine of corporations—as it is clear, for the reasons we have already given, that the general doctrine, and the deductions from it, as to misnomers* and other points, had become common in the courts; and therefore the few specimens we have given, are sufficient for all the practical purposes of our inquiry.

It remains only to add a few decisions upon the other points, which we have endeavoured to illustrate in the progress of our researches.

We find, in the 11th year of this reign, one of the few cases which occur at this period relative to villains.†

The question for the consideration of the court was, "whether a man, who being a lord of a villain, grants a reversion to him, as tenant for the term of life; and he attorns upon the grant made to him, thereby enfranchises him or not?" It was argued, that where a lord gives a thing to his villain; or takes any thing from him, by way of gift, it is a good enfranchisement. But if the lord does not give

1495.
Fol. 13,
M. T.
Villain.

* "That suits to avoid grants upon the account of *misnomer*, are odious suits; and a shameful thing it is, when grantees or lessees, who for the most part are illiterate persons, have paid great fines—Corporations, who are presumed best to know their name of foundation, should go about to avoid their own grants, under their common seal, upon such a slight mistake. And therefore the judges ought, in the cases (as generally they do) to make such constructions, if they may, that the grants may stand good.—Gouldsb. 122. Gawdy.—However, it seems in such a case remedy may be had in the Court of Chancery, for the Lord Chancellor said it was fit to help such lessees there, if for reasonable time, and made upon such consideration, otherwise not." Plowden, p. 536, in note.

† During this reign the lands of the barons were alienated to a great extent; and the *villains*, acquiring riches by their industry, which, in these later times, they had been allowed to exercise for their own benefit, became the purchasers: and thus was brought about an imperceptible, but considerable change in the constitution, which gave to the commons an increasing influence.

Hen. VII. any thing to his villain, nor take any thing from him, it is not an enfranchisement. If another makes a feoffment to a villain, upon condition that the lord will agree to it, and the lord agrees, it is a good feoffment—but the *villain* is *not enfranchised*. Again, if a feoffment be made to the villain, on condition that the lord will give to the villain 20s., and he gives it, this also is not an enfranchisement—because the lord may give to his villain chattels, or clothing, or money to expend. But if the lord grants him a lease for a term, it is an enfranchisement—because the villain takes an interest in the land against the lord. Where the lord does not do any thing, but suffers or admits any thing to be given to his villain, it is agreed that the villain shall have such thing; but it cannot be said to be an enfranchisement.

From this case it is evident that villainage still existed, and that the doctrine was acted upon; though, from the paucity of the cases under this head during the reign of Henry VII., it is obvious, that both the practice and the doctrine were wearing out, and were much mitigated in favour of the villain.

1497. In Keilway's Reports,* there is a case two years afterwards, in the 13th year of this reign, in which the plaintiff complains that the defendant claiming him as his *bondsman* had seized his goods. The defendant pleads that the plaintiff was his *villain* regardant: both parties gave surety:—the plaintiff to appear—and the defendant not to take his goods or body—and the question was directed to be tried upon a writ "de homine replegiando."

1490. We have some few cases also in the sixth year of this Tourn. reign, relative to the tourn. From which it appears that it continued in practice till this time, as is shown by a case, in

¹ East. T. which a man was indicted before the sheriff in his *tourn*.
Fol. 2. The presentment, however, was held void, on the special ground, that the court was held some time after Easter, being in violation of the statute of the 31st Edward III., chap. 14; which, therefore, appears to have been a subsisting statute applicable at that time to the *tourn*.

* Keilway, 34.

Another case, also, occurs, in which it was held that the offence of rape was not inquirable at the sheriff's *tourn*; it not being punishable at common law.

Hen. VII.

Fol. 5.
Sheriff's
tourn.

1496.

Fol. 18.

Another important case also occurs about the same period, which, even in those comparatively speaking modern times, most accurately defines the object, nature, and respective jurisdictions of the *tourn*, leets, and hundred courts; as well as the nature of the suit due at each of them; and by whom it was to be performed. It was a case of *replevin*: in which it was stated in argument, and admitted, that, at the commencement, *all the administration of justice was in the hands of the crown*. That after the multiplication of people, the administration of justice was divided into counties, the power being committed to a deputy in each county, namely, the "*sheriff*:"—who was the bailiff and deputy of the king, to punish offenders—defend the realm—to be in attendance upon the king in the time of war—and to cause all the *men** within his county to go with the king to defend the kingdom; from which cause his name is derived—that is, he is "*viscount*," to whom the governance of the county is committed; for which purpose he was to punish all offenders in two courts which were committed to him, namely, the "*shire court*," which is called the "*county court*;" and the "*tourn of the sheriff*;"—by which *all those of the county*† were governed. And the shire court was for one man to have *remedy* against another:—and the *tourn* was for each man of a certain age (those of the church only excepted) to come to it, *so that no man should be ignorant of the law*. Every man, therefore, was compellable to come to the *tourn*; *so that they should not be ignorant of the things which were shown there, or how they were governed*; and this is called "*suit royal*," on account of the allegiance they swear to the king: for it appears that they are all *sworn*

The crown

Sheriff.

Men.

County
court.

Tourn.

Suit royal.

* It is impossible to doubt that the term "*men*" must here have meant all the *freemen inhabiting* in the county—the *liberi homines comitatus*.

† This term, also, must include the *inhabitants* of the county—and, if so, why should not the same terms when applied to boroughs, as—"the men of the borough," "those of the borough," equally mean the inhabitants of the borough?—always, however, limiting it to the *free* inhabitants.

Hen. VII. and charged that they should be loyal and faithful men to the king. It then became too great for the sheriff alone to do, upon which *hundreds* were ordained, and divided, and derived out of the county:—and in each hundred was ordained a conservator of the peace, who was called the *constable*. Then *boroughs* also were made and ordained; and within them a conservator of the peace, who was called the *petit constable*, and in some places “Boroughead,” according to the diversity of the language. For this land, having been inhabited by different nations, as Britons, Saxons, Danes, and Normans, the diversity of terms is accounted for as derived from the language of those different nations:—but *all the terms are of one effect*. And all the hundreds or boroughs originally came to the *tourn* or shire, by reason of their allegiance, and the constables and the *petit constables* presented there the defaults of offenders. But as this view was of great trouble to the people, to travel to the tourn of the sheriff, at the special request of lords, *leets*, and view of frankpledge (which are all one) were granted within certain precincts, to redress all manner of defaults. And if the defaults were not redressed there, they were to be so at the tourn of the sheriff. And if a leet was misused, it would be seized into the hands of the king. And if it were upon that account, or any other, seized into his hands, all the “men” should then go to the tourn of the sheriff.

Leets.
View of
Frank-
pledge.

Dernier
resort to
the tourn.

Men.

Leet.

It was also stated in a subsequent part of the case, that every one should go to the *leet*: *as it is for the king, and for the common weal to inquire and present common nuisances and felonies, &c.* And if a man comes to a leet who is not resiant, yet the steward shall (if necessary) compel him to be sworn although not resiant, to present nuisances, &c.; and that is called suit service, and not suit royal, which cannot be performed but where the person is “resiant;” and need be done but once.

Old
Sarum.

In this case the reader will perceive the most distinct and explicit recognition of the doctrine to which we have before referred—upon which Old Sarum, and other places similarly circumstanced, ought to have been treated as no longer bo-

roughs, upon the principles of the common law, without any legislative interference. Hen. VII.

That the tourn and the leet were in fact the same, excepting that the former applied to the county at large, and the latter only to a borough or smaller district taken out of the county, may be collected from another case of replevin, which occurred in the 10th year of Henry VII., where the term "tourn" is used in the commencement of the case, although it is obvious, from the whole tenor of the report, that it in fact related to a court *leet*; which term occurs at the close of it. 1494.
Tourn and
Leet.

The defendant avowed the taking as lord of the manor; and alleged that from time immemorial, four men, and the reeve of the town of Dale, had been accustomed to come to his *tourn*; and that they inquired of different concealments within the town of Dale; and if they did not come they were amerced. In the present case they had refrained from coming, and were accordingly amerced; and he and his ancestors have ever been accustomed to distrain for such amercement. Fol. 15.

Tourn.

In a subsequent part of the case it was said, that of common right a man can distrain for an amercement in a *leet*; but that it was not surplusage to allege the prescription to distrain. Leet.

That the court leet also continued in existence at this time appears fully, from other cases occurring in this reign, a few of which we shall extract; premising that a term occurs in them, which, as we have seen before, has produced much error upon the subject of burgage tenure: so also might it, unexplained, lead to a mistake with respect to courts leet. Court Leet.

The "tenants" are spoken of as attending upon that court. If that term was intended to be applied to the tenant of the *freehold*, not residing within the limit of the leet, (as we have seen it applied in the instance of burgage tenure,) then it would be inconsistent with the law relative to courts leet:—because at that court, resiancy, and not tenure, is the ground of the obligation to do suit there. But if the word "tenant" is in this instance taken, as we have already contended it Tenants.

Hen. VII. ought to be in the case of burgage tenure, as confined to the actual tenant or *occupier* of a house within the jurisdiction of the leet, then it is correctly applied to that court, and means, in fact, the proper suitor there, viz., the *inhabitant householder paying scot and lot*. With this observation the following extract may be intelligible: otherwise it would have a strong tendency to create error.

1496.
Fol. 14.
H. T.
Leet.
Bye-laws. It was admitted in the course of argument, in a case, in the 11th year of this reign, respecting prescription, that the tenants in a *leet* could make *bye-laws*; and an assent among them would be binding. And that in a leet, a man could prescribe that for every affray or bloodshed, the offender should pay a certain sum of money; and that the owner of the leet could prescribe to distrain for it, and to sell the distress. And the reason is, because *it is the court of the king—and derives its authority from him*. And a *town* likewise can make bye-laws for themselves.

This case is also material, as clearly showing that the power of making bye-laws, which is usually considered as peculiar to corporations, is not in point of fact confined to those bodies; for the leet is not a corporation, nor necessarily connected with it; and yet it is, as is also said with respect to parishioners—tenants of a manor—and other aggregate bodies not incorporated—capable of making bye-laws.

Leet. A former case which we have cited,* seems to treat the hundred and leet as the same: which taken generally, and
Hundred. without explanation, might also lead to error. The hundred court, properly speaking, was not the same as the leet; but was the court held under the jurisdiction of the sheriff, for the trial of civil pleas in the different hundreds of the shire. On the other hand it often happened, that a hundred had a leet of its own, co-extensive with the hundred, by which it was exempted from suit in criminal matters at the sheriff's tourn. Thus there are many instances, as well in boroughs as in manors, where the court leet extends over the whole hundred; and the same observation may be made with respect to the leets of the wards, or wardmotes, in the greater
Wards.

* Vide ante, p. 930.

cities, which are said by Lord Coke, as we have seen before, to be "the same as hundreds." And this explanation, as the same learned author often states, "is necessary to understand the books"—as well as the former case:—all of which will be further illustrated by the following report.

In a case of replevin, in the 13th year of this reign, it was held, that a hundred and a leet were different in their nature. For a man could have a hundred in his manor (that is, a hundred court), or within a certain precinct, of common right: to which hundred, the court baron (or court for trial of real and civil pleas) is incident of common right—as a court of pie powder and toll are to a market or fair. And when a man makes an avowry for the amercements of a hundred, it is a good avowry to allege, that he was seized of them by *prescription*; as well as where a lord makes an avowry against his tenants, because the lordship and the hundred are things of common right. When a man makes an avowry for an amercement in a *leet*, he ought to have a title by prescription; otherwise the avowry is worth nothing—because "*the leet is against common right*" (that is, it is against the common right of the sheriff's jurisdiction, from which it is an exception). Thus the hundred and the leet vary in their nature, and cannot be parcel the one of the other. But when one manor is held of another, and the one escheats to the other, then this manor is parcel of the other to which it has escheated; for both manors are of the same nature. But it would not be so with the hundred or with the leet. It was alleged, that King Edward was seized of the leet by a prescriptive title, as parcel of the hundred, which he could not be by possibility; for he has not cognizance of the leet as parcel of the hundred—the leet always remaining in the king. In a subsequent part of the case it was said, that at the *leet* they had the view, at certain times of the year, of all the lieges of the king *resident* in the hundred:—which must, by common intendment, be confined to these cases, where the hundred is co-extensive with the leet.

Hen. VII.

1497.
Fol. 19.

Prescription.

Leet.

Hundred.

Leet.

Hen. VII.

KEILWAY'S REPORTS.

Having closed our extracts from the Year Books, we proceed to quote a few cases from the Reports of Keilway—which, though of an early date, were not, in fact, published until after many of the early reporters; as may be seen from the list of cases referred to in the commencement of the book.

Westminster.
1496.

The city of *Westminster* was, in the 12th year of this reign, treated as a distinct franchise, having an exclusive jurisdiction;—as a writ of “*habeas corpus cum causâ*” was at this time directed to its bailiffs.

Church-wardens.

1497.
Fol. 32.

It is often said, as a general proposition, that the church-wardens of a parish are incorporated; and it seems that they are so for some purposes—of which an instance is found in the Reports of Keilway in the same year. For it was stated to be the law, by the chief justice and the other judges, that “the wardens of a church are incorporated by “the common law:” and by the favour of the law can maintain an action of trespass, for damage done against the goods of their parishioners; but have not *capacity to accept a feoffment of land—for that cannot be done, without they be made a corporation by letters patent of the king.*” From which it is obvious, that from the numerous charters of incorporation which had at that time been granted, the doctrine was becoming generally understood, and clearly defined.

1504.
Fol. 66.

In another case in the same reporter, in the 20th year of this reign, in an action of trespass, it was decided, that an officer who levies an amercement by process and commandment of the court, should not be punished—because he acts by authority, and colour of justice. And it was admitted, that the *commencement of all leets in England, was derived out of the tourn of the sheriff, by grant of the king.*

Leets.

1506.
Fol. 89.
Steward.
Leet.

In another case, in the 22d year of this reign, it appears that a man was indicted, before the *steward of the leet*, of a felony committed in Dale; and because the indictment did

* Vide etiam, 1 Inst. 3 a.

not state that Dale was within the jurisdiction, the party Hen. VII. was dismissed by the opinion of all the judges.

Again, on another occasion, in the same year, it was stated Pevensay. Fol. 89 B. that *Pevensay*, in Sussex, was parcel of the duchy of Lancaster; and was made a member of the Cinque Ports, by patents of the king, before that grant;—and after that grant, the Duke of Lancaster had a *leet* within the town, and held it before the Lect. *steward* of the duchy. And the *portreeve* of the duchy had Steward. Portreeve. been always accustomed, a certain time before the leet, to summon 18 of the borough* of Pevensay, and 24 knights, to appear before the steward of the duchy. That lately they appeared on the summons, but that they refused to be sworn by the *seneschal*, or *steward*, because he had commanded them, upon the penalty of 40*s.*, to be sworn, and they had refused; and that the seneschal, or steward, had directed a replevin of certain beasts of a *stranger*; but that those of the port had beaten the bailiff and men of the seneschal, or steward. And directions were given to one Gray, to summon a court to elect a new *portreeve*. And the former portreeve was taken by a *capias*, upon an indictment of Portreeve. riot, before them of the same port of the town of Pevensay, as justices of the peace; and was for a considerable period detained in prison. That divers privy seals had been issued against the principal offenders, to make them come before the chancellor of the duchy; but they were disobeyed. However, a special command of the under-warden of the ports was issued; upon which they came and were committed to prison for their contempt, and a day was awarded them to answer for it. And for answer, they stated, that under the name of “mayor, bailiffs, jurats, and *inhabitants* of the Cinque Ports in Kent and Sussex,” divers grants had been made to them by several kings of England; which had been confirmed by the then present king,—That they should not be demanded nor compelled to answer out of the ports, for any cause done or committed within them;

* This general description of the persons who were to be summoned, as being “of the borough,” is precisely of the same kind as those which we have before noted, of “the men of the county and borough,” and “those of the county and borough”—all clearly meaning the *free inhabitants* in those districts.

Hen. VII. but that it should be determined before the mayor, bailiff,
 1506. and jurats of the ports. And for default of justice, repara-
 Shepway. tion should be made them at Shepway, before the lieu-
 tenant for the time being. And that the offences that were
 alleged against them, were committed within the Cinque
 Ports; and they therefore prayed to be discharged.

It was said by the justices, that the dispute was between
 the king as Duke of Lancaster, and those of the ports by
 reason of their corporation, as "mayor, bailiffs, and jurats:"
 in which case, no person could demand an answer out of the
 ports for any party, except for matters respecting the king;
 but that *it would not be reasonable that they should them-
 selves be the judges.*

Brudnell said, their charter speaks of *inhabitants* and *free-
 holders* within the ports, who ought not to be sued out of
 them.

This case is material as showing, that the leet was to be
 held before the steward; although there was another officer of
 the king in the place, as the portreeve; whose functions were
 analogous to those of the mayor or the bailiff. The free *in-
 habitants* of this branch of the Cinque Ports, are spoken of in
 the same general manner (which we have before noted) as
 "*those of the ports.*" And although the town is mentioned,
 in conformity with the doctrine—practice—and charters of
 that period, as incorporated; yet it is clear, that the incor-
Inhabitants poration was of all the *inhabitants*:—which in truth made no
 essential alteration in the character of the burgesses, but
 merely superadded to their former privileges, the express
 right to enjoy corporate powers, as we have so often pointed
 out.

CHESTER.

The county palatine of *Chester* was anciently not subject
 to the general laws of the realm, because not being repre-
 sented in Parliament, they could not be considered as
 having concurred in the making of them. They had, how-
 ever, their "*commune concilium,*" as well before the Con-
 quest as after.*

* Squire, 261, in note. See also King's Vale Royal of England, 9—11.

Lord Coke, distinguishes Chester, Lancaster, and Durham, Hen. VII. 1506. from other counties, as counties palatine; and says, they are exempted from the jurisdiction of the king's courts, and within them are jura regalia, and plenary jurisdiction.*

And Lord Hale, chief justice of the King's Bench, in the case of *Fisher v. Batten*, describes Chester as a county palatine by prescription.†

It is also said, in the same reports from which we have cited this case, that "these counties palatine had their original from politic reasons, because they were adjacent to enemies' countries; so that the *inhabitants* having administration of justice at home, and not being obliged to attend other courts, those parts should not be disfurnished of *inhabitants* who might secure the country from incursions." Which again confirms the assertion, that all these grants, privileges, and franchises, were, in truth, to be enjoyed by the *inhabitants* of the respective districts, whether counties palatine — wapentakes — ridings — hundreds — lathes — cities — boroughs — or towns.

Chester, which became in the next reign the subject of Charters. special legislative enactment, obtained, in the 22d year of this reign, a charter which, after reciting the great affection which the king bore to the citizens and commonalty of the city, and in consideration of the great costs and expenses which the *inhabitants* had borne for him, granted and confirmed to the *citizens* and *commonalty*, their *heirs* and successors for ever, that the city, and its then suburbs (with the exception of the castle) should be *exempted and separated from the shire of Chester*, and should thenceforth be a county County of itself. by itself, and be called the county of the city of Chester.

That the citizens and commonalty, their *heirs* and successors, might yearly elect 24 fellow citizens to be aldermen, Aldermen. and 40 other citizens for the common council. And that by the unanimous consent of the mayor, aldermen, sheriffs, and Common Council. the other citizens of the common council, one of the 24 aldermen should be chosen recorder; and that the citizens and Recorder. commonalty might choose from among themselves yearly,

* 2 Inst. 556.

† 1 Vent. 155.

Hen. VII. one person to be mayor, who should also be the escheator,
 Mayor. and clerk of the market.

Communi- That the mayor and commonalty, their *heirs* and suc-
 nity. cessors, should for ever be one community of themselves,
 and by the name of the "mayor and citizens of the city of
 Chester," be capable to plead and be impleaded. That the
 mayor and citizens might choose from among themselves

Mayor. yearly one citizen for mayor, and two for sheriffs, which mayor
 and sheriffs should be chosen in the following manner; viz. all
 the fellow citizens of the city, suburbs and hamlets, who choose
 to be present at the election of the mayor, every year upon
 Friday next after St. Dennis, might meet together freely
 and without hinderance at the common hall of the city,
 when the greater part of them should name two citizens

Dwelling. *dwelling* in the city, most sufficient, discreet, and best able
 of the number of the 24 aldermen; neither of them there-
 tofore having occupied the office of sheriff for the space of
 three years then next preceding, of which two so named,
 the greater part of the aldermen and sheriffs then and there
 present should, by scrutiny, appoint one as mayor; and if
 it so fall out that in the election or nomination of this
 one person for mayor, the discordant voices be in number
 equal, then the voice of the mayor for the time being should
 be taken and accounted for two. But in the choosing of the
 sheriff of the city this form should be observed, viz.:—That
 the mayor, sheriffs, aldermen, and other citizens *dwelling*
 there, if they choose to be present at the election of such

Sheriffs. sheriffs, might, without contradiction, yearly assemble and
 meet together, where the mayor, sheriffs, and aldermen for
 the time being, or the greater part of them, then and there
 personally being, should choose one able and sufficient
 person for one of the sheriffs; and the other fellow citizens,
 or the greater part of them, one other able and sufficient
 person for the other sheriff, which two so chosen sheriffs
 should, for one whole year so be and remain.

Non- Provisions are then made, that no other escheator, clerk
 intromit. of the market, or sheriff, should enter within the liberty
 of the city. Powers are given for the sheriff to hold a

county court, and also to determine all personal actions that might arise within the city. That two coroners should be chosen yearly by the mayor. That the mayor, sheriff, and the 40 fellow citizens, should be authorized to make bye-laws for the governance of the citizens, who were not to be impleaded out of the city, but might hold their *portmote court* as accustomed. That the citizens should not be summoned, placed, or impannelled upon juries, &c. without the city, unless they concerned the king. And that the aldermen of the city should be justices of the peace whilst they remained aldermen. The customs of the city were then generally confirmed, and the city was to be held at fee-farm.

Hen. VII.

County
court.

Portmote.

Dwelling.

WALES.

With respect to Wales, we have before seen the arbitrary statutes in the reign of Henry IV., which excluded the Welsh from all English privileges.

In the 23rd year of this reign, Henry VII., apparently with the view of mitigating some of these severities, granted a charter to the tenants and *inhabitants* of his lordship of *Ruthin*, otherwise called Defferyncloyd,—reciting the statute of the second of Henry IV., and also that of the fourth year of the same reign, and the services which the tenants and inhabitants of Ruthin had performed to the king—that they and their heirs, and the tenants of the Bishop of Bangor, and of all other barons within the lordship, and the warden of Ruthin, might acquire and hold lands, &c., within the English boroughs and towns, to them and their heirs, and might hold offices, and become *burgesses*, as English persons.

1507.

Ruthin.

Burgesses.

The charter also puts an end to tenure of gavelkind and Welsh tenure; and also to the unreasonable exactions called “mobyer,” “arian arthell,” or reliefs called “beddour de tevedde,” “kyllyghstraton” and “kyllyghrethe,” “arian parva,” and “arian keveney.” And that the tenants, *inhabitants*, their heirs and successors, should be free of toll, murage, stallage, pannage, picage, pontage, &c. And the charter makes the town of Ruthin, and half a mile in the circuit of the town, a free borough. And that all men and

Inhabitants

Hen. VII. tenants, their heirs and successors, *inhabiting* in the same town, or thereafter to *inhabit*, should be *free burgesses*, as the burgesses of the town of *Tenby*—so that no one should be a burgess, or be reputed as a burgess, unless he should be so elected or called by the co-burgesses of the town, and should make fine with them. And that the burgesses might enjoy all the liberties and privileges which they had theretofore enjoyed.

We have before shown, by a variety of documents, that the legal course, founded upon the reciprocity of rights and duties, was for the burgesses to be presented at the court leet as burgesses, in consequence of their being *inhabitant householders, paying scot and lot* within the borough—and that properly speaking, there was no arbitrary power of election. In this comparatively modern charter—following in point of time the extracts from some of the municipal documents which we have already given, in which the word “elected” had been interpolated—we find that the power of electing burgesses is expressly given to the co-burgesses. If that term in the charter meant election, in the sense which we have before explained of the election of constables and other officers—who, though they may to one intent be truly said to be elected; yet they were, in fact, to be taken according to their proper turns and their qualifications—the term was then used in its proper legal sense, and consistently with the principles and usages of our early law. But if, on the contrary, it meant an arbitrary power of election, without reference to previous qualification or right, then indeed it introduced into Ruthin a new system, which has since been more generally adopted into corporations in other places, and has led to those abuses of which such just complaint has been made; and to point out and correct which, is one of the objects of our researches. The payment of a fine was altogether consistent with the early principles of our municipal institutions, and has been already sufficiently explained, so as to render any further observations upon that point unnecessary.

IRELAND.

To proceed with the documents of this reign relative to Ireland. It appears from the Patent and Confirmation Rolls, that Ireland received in this reign six charters—three to Waterford, two to Youghal, and one to Cork.

The first charter to *Waterford* is one of incorporation,* *Waterford.* which commences with a recital of the king's good will towards the city, precisely similar to the form we have already given in the reigns of Henry VI. and Edward IV.

It then grants to the mayor, bailiffs, and citizens, that they should have power to elect from themselves all their officers and ministers within the city, and that they should take their oaths within the city as accustomed. That the city of one mayor, two bailiffs, and citizens, for ever should be *corporate*; *Corporate.* and that by the name of "the mayor, bailiffs, and citizens of the city of Waterford," should have power to plead and be impleaded, and be persons able and capable in law to hold lands, &c.

A recital then occurs of that part of the charter of King John, which states, that he had granted and confirmed to the citizens of the city of Waterford within the walls, and this king confirms that charter, and grants that the mayor and commonalty of the city should have all amercements; that the mayor should be the escheator; that no admiral should intromit, &c.; that no citizen should make duel in the city. That they should have a gaol; that they should have the *return of all writs.* That no coroner, nor other minister *Return of writs.* should intromit; that the mayor, bailiffs, citizens, and *inhabitants,* should not be compelled to appear, either in war or peace, upon any writs or precepts whatsoever, without the city. The goods of felons are then granted: and provisions are made respecting the fee-farm, with a general confirmation of all previous grants. *Non-intromit. Inhabitants*

The mayor, bailiffs, and citizens of Waterford, also received *1487.* several charters in the second and third years of this reign,†

* Vide Rot. Conf. 2 Hen. VIII. p. 10, n. 11.

† Rot. Conf. 2 Hen. VII. p. 4. n. 4. Rot. Conf. 2 Hen. VII. p. 2.

Hen. VII. granting them a gaol, with powers to imprison felons, &c. ;* and that the mayor and bailiffs should be *justices*, with

Justices. powers to hear and determine all felonies, and that no
Non-intro- county justice should intromit. Provisions of great length
mit. occur respecting the fee-farm, &c., but as none of them afford any additional information to that which we have already given, we shall abstain from further quotation.

Youghal. *Youghal*, which had been incorporated by Richard III.,
1488. received in the fourth of this reign a charter, confirming some

Corporate. of their previous liberties :† and also another charter in the
1496. 12th year, containing *corporate* powers, and granting that the burgesses and commonalty might yearly assemble, and elect from themselves a mayor and two bailiffs, and that they should plead, &c. by the name of “the mayor, bailiffs, bur-
“gesses, and commonalty of the town of Youghal, &c.,” with a confirmation of all their previous franchises : and that they
Jurisdiction. should have jurisdiction in all personal pleas arising within the town, with all amercements, issues, and profits, &c. ; and
Non-intro- that no other minister should intromit, &c.
mit.

Cork. *Cork*, in the fifteenth year of this reign, also received a
1499. charter, but it does not contain any provisions tending further to elucidate our inquiry.‡

Besides these charters on the Patent and Confirmation
Athboy. Rolls, there seems also to have been one granted to *Athboy*,
1493. by which the king confirmed the previous charters, which had been given by Henry IV. and Henry VI. to the provost, commons, and burgesses of Athboy, to have, hold, and occupy for themselves, their *heirs* and successors, all customs, &c. towards the repairing of the walls and pavements of the town. That the provost, burgesses, and commons,
Bye-laws. might grant and ordain, by their unanimous consent, laws, acts, and ordinances, in their hundred court, for the common utility of the town as often as need should be. That
Strange all *strange merchants* using the auncill or poundrill might
merchants be arrested for so doing, and imprisoned until they should pay a suitable fine. That all foreign merchants should contri-

* Pat. 3 Hen. VII. p. 2, n. 16.

† Rot. Conf. 4 Hen. VII. p. 1, n. 1. Pat. 12 Hen. VII. p. 1.

‡ Pat. 15 Hen. VII. p. 2, n. 15.

bute to the burdens of the town according to the quantity Hen. VII. of goods bought and sold. That they should show their wares upon their first arrival to the provost and burgesses, and should sell those wares to them, before all others, during the space of ten days* for their money reasonably to be paid ; and if they should not be purchased within that time, it should then be lawful for them to be sold to whomsoever it pleased them, &c. That all the free tenants or burgesses who had, or possessed any messuages, tenements, lands, or *burgages*, Burgages. within the town, should be made contributory to all aids, &c.

From these charters it is clear, that the boroughs and towns in Ireland were at that time, in substance, upon the same footing as the boroughs and towns in England and Wales ; and it seems impossible not to be satisfied of that general identity which the other documents, both of that country and this, would no doubt further illustrate, if time and opportunity occurred for the inspection and insertion of them ; particularly if we recollect, that it was in this reign that Sir Edward Poyning induced the Parliament of Ireland to pass Poyning's Law. his celebrated law, establishing the authority of the English government in Ireland, by enacting, "that all the former laws of England should be in force in Ireland."

Another document among the records of the Exchequer may suffice to show that the *freemen of Dublin*, like the Dublin. 1496. freemen in England, were required to be actually *inhabitant* and *resident* within the place, although, for special purposes, or during temporary absence, they might be allowed to exercise some of their privileges, though not dwelling at the time within the place ; probably one of the methods by which non-resident freemen were, in subsequent periods, more extensively introduced. Freemen. Resident.

In an account in the Exchequer, concerning the customs of the port of Dublin, Richard Beswyke, of Dublin, in answer to a claim of poundage, stated, that in the statute which gives the poundage to the king, the *freemen* of the city of *Dublin* and the town of *Drogheda*, who then were, and who Drogheda.

* The provision for selling within a certain number of days is, in principle, the same as the general English act, of the 14th and 15th of Hen. VIII., ch. 1.

Hen. VII. in future time should be by birth or apprenticeship or other mode, *dwelling* within the said city or town, should not pay poundage, as appears more plainly by the statute enrolled of record in the first year of the reign of Richard III. He then alleged, that at an assembly in the city, before the mayor and bailiffs, he was made a freeman, and ever since had been

Resided. a freeman, and still *resided* within the city.

In confirmation of which, he produced the certificate of the mayor and bailiffs stating, that “Richard Beswyke, of Manchester, in the county of Lancaster, was admitted and “accepted to the liberties of the city as long as he should be “*resident* in the city ;” and that the liberty should be of force and effect for the said Richard during the time he should be resident in England—and to all his attornies and servants, as if the said Richard was residing within the city of Dublin, and was a citizen of the city ; and that he was sworn in full assembly of the mayor, jurats, and citizens—so that he might freely sell and buy, as well in England as in Ireland, as the citizens of the said city could, which was granted them by Magna Charta.

And the king’s attorney general said he could not deny the plea, and therefore the barons adjudged that the charges should be withdrawn.

CONCLUSION.

We have now closed the documents of the reign of Henry VII., which are important to our inquiries, as showing the full confirmation of the doctrine of incorporation ; but at the same time clearly establishing, that the *inhabitants* were the objects of those grants, and that, therefore, properly speaking, such charters made no essential alteration in either the

Incorporation.
Inhabitants.

Burgesses. class or character of the *burgesses*, who were still the *free inhabitant householders paying scot and lot* ; all the principles and usages out of which that particular character arose being still in full force to this time, as *villainage—manumission—emancipation—the jurisdiction of the tourn and leet—the performance of suit royal—the payment of public burdens from a common fund, under the name of scot—and the*

Scot.

execution of public duties in proper rotation under the name ^{Hen. VII.} of *lot*; so that, notwithstanding the general introduction of ^{Lot.} *corporations*, the pure principles of our early municipal institutions, continued as they had been from the earliest times; and the burgesses were still beyond all doubt, the "*free inhabitant householders paying scot and lot.*"

HENRY VIII.

The system of municipal corporations, to the extent at least of giving them corporate powers, was extensively established, as we have seen, in the two preceding reigns. Upon that point, therefore, we shall have little to add, except the noting of a few charters of incorporation, and some still granted *not* of that description. ^{1509. Incorporations.}

The *Statutes* also of this reign will be chiefly referred to for the purpose of pointing out the same distinction. But although these topics will for the future form no considerable part of our investigation, the eventful reign of Henry VIII. will open to us fresh matter for inquiry and observation. ^{Statutes.}

In some respects the municipal institutions of the country continued unaltered from their original character. But the great changes occurring in this reign with respect to religion, and the consequent excitement of the minds of the public, leading them to consider and canvass other subjects, for which opportunities were afforded by the extension of the use of printing, as well as from the many causes of discussion resulting from the violent and varying acts of the king, all tended to bring into effect new opinions and new sentiments; and a scene gradually opens upon us, in which may be seen the causes—the progress—and, in the distance, the final effects which had their principal origin in this extraordinary period.

Hume justly observes, "that the minds of men, somewhat "awakened from a profound sleep of so many centuries,

Hen. VIII. "were prepared for every novelty;" still, as we have observed before, the municipal institutions in many respects continued the same; particularly the class of persons who were the *burgesses*, not having, at this period, undergone any change. The acquiescence of Parliament in the strong measures suggested by the crown, had not made it material for either the king, or the leading men in the country, to take any general or decisive steps to influence the elections. And excepting the traces we have already marked in the reign of Henry VI. and Edward IV., of the interest which the people began to take in the elections, and the partial influence which some great men began to exercise, neither the electors nor the elected had interfered in this respect with such zeal or appetite as to induce them to disfigure or pervert those institutions which it ought to have been the object of both to have preserved in their purity. Thus, with the exception of the superinduced privilege of being incorporated, the burgesses continued (as they were before) to be the *inhabitant householders paying scot and lot*, as we shall show by our extracts from the records of Yarmouth—Wells—Seaford—and Hythe.

But after Henry VIII. had permitted, if not encouraged, the commencement of the Reformation, and had embarked for some time as a consequence of it, in expensive warfare, and little less expensive amusements, his coffers became empty, and violent acts were resorted to by him for raising money without the consent of Parliament. These things led the king on the one hand to make efforts to secure the compliance of Parliament, and for that purpose to procure the introduction of persons friendly to him into the House of Commons:—On the other hand, this conduct of the king naturally produced an indisposition in the people at large to comply with his inclinations in this respect, however popular he might be in others.

From the nature of this interference it is obvious that it would at first be attempted secretly, and few traces of it would be left. In one or two instances, however, the fact can still be ascertained without any possible doubt, as they

are evidenced by entries upon public records of the boroughs. Particularly in Colchester, there is still extant a letter written by the king to the burgesses, requesting them to return to Parliament a member whom he nominated. And in one instance where this effort was made, the burgesses in answer sent a respectful reply, in which they stated their devotion to the king, and their inclination, in all matters allowable, to meet his highness's pleasure; but that in this respect, as it related to their duty to the country at large, they must beg to be excused for not complying with his highness's request; though, in fact, they subsequently acquiesced.

With these prefatory remarks, we shall proceed to give those Statutes and Charters of this date, which may illustrate our subject, in the same succession we have previously adopted.

STATUTES.

The fifth chapter of the statutes of the first year of the reign of Henry VIII., gives further regulations with respect to merchants, denizens, and *strangers*, as to the customing of goods. And in the 7th, 8th, and other chapters, regulations are made with respect to the coroners and escheators.

The 8th chapter of the 3d of Henry VIII, relative to the assise of bread and beer, speaks of *cities, boroughs, and towns corporate*; and of their decay and want of *inhabitants*; the *dwellers* and *inhabitants* being only, as it is stated, persons of small substance.

In the 7th chapter of the 4th year of this reign, cities, boroughs, and towns are only mentioned; they are *not* said to be *corporate*.

And the same occurs in the 9th chapter of the 6th year.

The 15th chapter contains provisions against subsequent letters patent granted by the king, annulling previous grants which are not specifically mentioned; a provision, which if not material to our present inquiry, at all events will explain the reason why the former charters are so constantly referred to, in successive grants of the crown.

The 18th chapter puts the under-sheriff and other officers of Bristol upon the same footing as those of London.

Hen. VIII.

Colches-
ter.
1522.1509.
Cap. 5.

Cap. 7, 8.

1511.
Cap. 8.

Corporate.

1512.
Cap. 7.1514.
Cap. 9.Cap. 15.
King's
grants.

Cap. 18.

Bristol.

Hen. VIII.

1522.
Cap. 2.
Appren-
tices.

In the Parliament of the 14th and 15th years, the second chapter contains regulations as to the persons who may be taken as *apprentices*; the third section directing that all *strangers, dwelling* within two miles of London, should be under the search and reformation of the wardens and fellowships of handicrafts within the city—with one substantial *stranger*, being a *householder* of the same craft.

Stranger,
house-
holder.

In that act towns corporate are mentioned.

Cap. 3.

In the third chapter, regulations are made for the worsted-weavers and *inhabitants* of Yarmouth and Lynn; and what *apprentices* they may take; and although Norwich and Lynn are repeatedly spoken of, neither of them are mentioned as corporate.

Cap. 5.
College of
Physicians
corporate.

The fifth chapter, upon the petition of certain physicians,* reciting letters patent of the 10th year of the king, making them a body *corporate*, and giving them the usual corporate powers, and other privileges, on the ground of such incorporation being meritorious and very good for the commonwealth of the town, confirms that grant. An exception, nevertheless, being made of graduates of the University of Oxford.

Cap. 10.

Leets.

The 10th chapter, against the illegal killing of hares, directs that the *stewards of leets*, may amongst others, have authority to inquire into offences under that act.

1529.
Cap. 12.

Bridport.

The 12th chapter of the 21st year of Henry VIII. is founded upon the petitions of the bailiffs, burgesses, and other *inhabitants* of Bridport; complaining of certain persons having deserted the town, for which it was enacted, that hemp *growing* within five miles of the town should be sold there.

Cap. 16.

The 16th chapter, relative to *stranger* artificers and *apprentices*, speaks, in the recital, of cities, towns, boroughs, and villages:—but makes no allusion to their being incorporated. The subsequent clauses, however, mention towns corporate.

Cap. 18.

In another chapter, the mayor, burgesses, and *commonalty* of Newcastle are spoken of.

1530.

The fourth chapter of the 22d of Henry VIII. is made for

* Et vide etiam, 1 Mary, sess. 2, cap. 9.

further enforcing the statute of the 19th year, respecting the bye-laws made by *guilds* and fraternities; and for preventing the exactions which were attempted to be levied upon *apprentices* at their first entry into their common hall; which are said to have been enforced by the wardens after their own sinister minds and pleasures, contrary to that act—and therefore such fines are limited for the future.

Hen. VIII.

1530.
Cap. 4.
Guilds.Appren-
tices.

The next chapter, which relates to bridges and highways, speaks, in the first and second sections, of shires, franchises, cities and boroughs, towns and parishes—but says nothing of corporate towns.

Cap. 5.

But the third section expressly speaks of towns corporate as well as cities—the *inhabitants* of which are directed to repair the bridges in their districts, as the shires and ridings are within their limits; from which it cannot but be inferred, that the framers of that statute (in accordance with all the ancient documents) considered, that the persons who were bound to do what was necessary for those respective districts, were, in all, the same class, viz., the *taxable inhabitants*:—and it seems clear that such persons were treated as the corporators in the corporate towns.

Sec. 3.
Corporate.
Inhabi-
tants.

It exhibits a striking variety in these statutes, that the eighth chapter of the same reign, relative to denizen *strangers*, speaks again of cities, boroughs, and towns; but does *not* describe them as *corporate*.

Cap. 8.

These arbitrary changes in the terms used, cannot by possibility be accounted for, except upon the ground we have so frequently urged, that the being incorporated made no essential difference in the constitution, or general government of the places accepting these grants:—and in truth it only gave them the additional corporate powers.

The second section of this last act uses again the same terms at the commencement, without speaking of corporations: but in imposing the penalty at the end of the same clause, charges upon every city 5*l.*, and every town corporate 40*s.*

Sec. 2.

The third section of the same act contains a proviso in favour of the merchants of the “Hans of Almain,” having

Sec. 3.

Hen. VIII. the house within the city of London, called "Guild-hallda Theutonicorum," otherwise the merchants of the Stilyard.

1531. It is worthy of remark, that the statute for the building
 Cap. 2. of gaols in the 23rd year of this reign, directs generally that
 the *inhabitants* of the county shall be charged for that pur-
 Inhabi-
 tants.
 Corporate. pose; making an exception for *corporate* towns, which have
 gaols themselves.

We have seen throughout the course of our inquiry, that
 the *assise of bread and beer* formed a considerable feature in
 the articles to be inquired into at the *leet*; and generally
 forms a particular head in the charters granted during the
 successive reigns. Pursuing the principle of those inquests
 and grants, the fourth chapter of the same year makes spe-
 cific provisions for the size of barrels, &c., directing that no
 brewer should be of the mystery of coopers, or make any
 barrels, &c., but that they should be made and marked by
 the common artificers of coopers.

Sec. 5. And the fifth section places the brewers under the direction
 of the justices of the peace of the shire, where such brewers
dwell without any city, borough, or *town corporate*, where
 no *head officer, as mayor, bailiffs, or sheriffs* had authority—
 clearly marking the distinction between the shires at large,
 and the cities, boroughs, and towns corporate, having pecu-
 liar privileges and exclusive jurisdictions. But the next
 branch of the same clause, as if intended to show that a
 town being incorporated was not the reason of its having such
 exclusive jurisdiction, expressly speaks of cities, boroughs,
 and towns, where there be mayors, sheriffs, or other head
 officers:—*not* describing them as *corporate*.

Sec. 7. And the seventh section gives to the warden of the occu-
 pation or mystery of coopers, power to guage all manner of
 barrels put for sale, taking with them an officer of the mayor:
 distinctly showing that the company had not in itself any
 municipal power or authority, but was obliged to call in aid
 the assistance of the mayor's officers.

The mention of cities, boroughs, and towns, not described
 as corporate, occurs again in the ninth section.

Sec. 9. We have a striking instance of the law relative to *resiants*
 Cap. 5.
 Sec. 10.

STATUTES.

being still enforced during this reign, and of the import which was attached to their being sworn in the *court* that in the 10th section of the fifth chapter of this relative to sewers, persons are prohibited from acting commissioners before they are sworn, unless they are *resiants* Resiants. and *free* of any city, borough, or town *corporate*, or have been admitted as utter barristers in one of the four inns of court; in each of which cases the parties would have been sworn to their allegiance—in the former at the *court leet* of the borough:—and in the latter before the court in which the party was admitted as a barrister; and the 10th chapter Barrister. of the 25th Henry VIII. confines the being sworn to those who are *dwelling* within the county.

We have already seen that the *inhabitants* of the borough of *Plymouth*, and places in its neighbourhood, were incorpo- Plymouth. rated; and also, that the *inhabitants* of the borough of *Inhabitants* *Dartmouth* and Southtown adjoining to it were likewise in- Dartmouth corporated. We also find, in the eighth chapter of the same year, that the bill for the preservation of the havens in the west, is upon the petition amongst others of the *inhabitants* of Plymouth and Dartmouth.

There is something so cogently reasonable in all local jurisdiction and privileges being confined to the persons who *inhabit* and *dwell* within the district, that had not actual experience to the contrary long existed in this country, it would have been thought, *à priori*, that no person could have asserted a different position; and yet the extension of such jurisdiction and privileges to *non-residents*—or persons Non-resi-
dents. inhabiting or dwelling out of the district—has become so inveterate a practice, that the converse of the position is now true, and the difficulty at present is rather to combat the deep-rooted prejudice, that, contrary to all reason and principle, non-residents should be included in the grant of such privileges, than to be able to rely with well-founded confidence on the self-evident presumption, that such privileges were intended to have been enjoyed only by persons *residing* upon the spot.

Hen. VIII.

1531.

We have however seen, that, in almost all instances, when there was no reason for perverting the ordinary nature of these things, the provisions were chiefly made referrible to the *inhabitants* of the district to which they related, as the *inhabitants* of shires for the repair of bridges—of the *inhabitants* of parishes or parishioners for the repair of churches and highways—and the *inhabitants* within the forests, with reference to the forest laws.

Cap. 9.

So again in the ninth chapter of this year, relative to ecclesiastical jurisdiction, the whole is by the successive clauses confined to those *inhabiting, dwelling or resident* in the several places to which the jurisdiction applied.

Mortmain.

If there is any head of the law which would appear to be more immediately connected with corporations than another, it is that of *mortmain*; which, strictly speaking, seems to be a correlative of perpetual succession;—because it has its very essence in the grant of lands to perpetual bodies; whereby, as there can be no escheat, the land is said to be in the

Cap. 10.

“*dead*,” or unproductive hand. And yet, in the tenth chapter of this year, relative to the uses of lands granted in mortmain, after speaking of guilds, fraternities, commonalties, companies or brotherhoods, they are described as “made of devotion, or by common assent of the people, without any corporation.” From whence it appears, in conformity with what we have stated before to be the ancient common law, that aggregate bodies did, and could take in perpetual succession, without being incorporated; that doctrine being impliedly asserted by lands being assumed to be held in mortmain, when granted by common assent of the people, without any corporation.

Cap. 13.

The 13th chapter provides for the trial of murder in cities, boroughs and towns *corporate*, and speaks of a person’s being “the king’s natural subjects born, which, either by the name of a citizen, or of a freeman, or any other name, doth enjoy and use the liberties of any city, borough, or town *corporate* where he *dwelleth* and *maketh his abode*.” And the knights and squires, excepted in the proviso, are described

as "*dwelling, abiding, or resorting* in such city, town, or borough" as "*rough corporate*." Men. VIII.

This statute is material, as showing that, the legislature treated citizens, freemen, burgesses, and similar names as synonymous; according to the position we have before made, founded upon the numerous instances we have cited.

It also shows that the persons who were described by those names, were those *dwelling, abiding, and making their abode there*.

In the important statute for the restraint of appeals, in the 25th year of this reign, as illustrative of the meaning of the term so frequently occurring in charters of the "body politic," we should note, that those terms are used as applicable to the whole body of the kingdom, which of course could not be considered as incorporated. Speaking of those who owed obedience to the king, the statute describes them as being "a body politic, compact of all sorts and degrees of people, divided in terms and by names of spirituality and temporality." And in another part of the statute they are spoken of under the general name of "*resiants* within the realm, of what degree soever they may be."

1533.
Cap. 12.

The same general description of persons *resiant* or inhabitant within the realm, occurs in the act respecting printers, in the same year.

Cap. 15.

The sixth chapter of the 26th of Henry VIII. concerning the councils in Wales, uses the same terms with reference to the people of that part of the kingdom. And as confirmatory of the similarity of the usages in the different parts of the island, traces appear in that statute of some customs in Wales analogous to the *scotale*, which we have seen mentioned so frequently in the early charters of London and other places;—thus the levying of any "*commorth*"—"bydale"—"*tenant's ale*," or other collection is prohibited.

1534.
Cap. 6.

The eleventh chapter of the same year contains provisions for the punishment of assaults, of persons *dwelling* in Wales. Wales.
Cap. 11.
Dwelling.

The statute for regulating the making of worsteds in the Cap. 16.

Hen. VIII. city of Norwich, and in the towns of Lynn and Yarmouth,
 1534. recites the provisions respecting the craftsmen called worsted-
 Norwich. weavers, *inhabiting* the town of Great Yarmouth, which au-
 Lynn. thorized them to elect yearly one honest man of the mystery,
 Yarmouth. being a *householder*, to be the warden of the craft. And that
 Inhabiting no person *inhabiting* Yarmouth should weave any worsted,
 House- except he be an Englishman *born*, and had been an *appren-*
 holder. *tice* to the occupation. As to the town of Lynn, it was
 provided, that whenever it should be *inhabited* by ten *house-*
holders or more using the craft of worsted weavers, it should
 be lawful for the *inhabitants* to elect yearly one warden.
 And that no person *inhabiting* within the town of Lynn
 should make worsted, &c. except he were English *born*, and
 had been an *apprentice* to the occupation. And till ten *house-*
holders should inhabit Lynn, the wardens of Norwich were to
 send one of their wardens to that place every 28th day. And
 every craftsman of that mystery, *dwelling* within Lynn and
 Yarmouth, might, at their own free wills and liberties, from
 thenceforth take as *apprentice* any male at the age of 14
 and upwards, being the king's natural subject, for the term
 of *seven years*, and not under, provided they do not exceed
 two, and notwithstanding the father of the apprentice might
 not expend in lands and tenements the value of 20s.

Cap. 16. These provisions are all confirmed by the 16th chapter of
 the 26th Henry VIII.

From these enactments, though referrible to the particular
 trade at Norwich, Yarmouth, and Lynn, we may draw a con-
 firmation of the doctrine we have so frequently asserted, that
 all charters and provisions were in truth, intended for the
 benefit and the regulation of the persons *residing* within the
 districts to which they refer. And in these statutes, the
inhabitants, who are particularly referred to, are described
 as *householders*; and the apprentices are required to be
 bound for seven years at the least.

1535. The statute of the 27th Henry VIII., chapter 27, for the
 Cap. 27. making of justices of the peace within Chester and Wales,
 directs that the judges who are appointed shall hear and
 determine all matters presentable before the justices in any

other shire of the realm of England, by force of any statute, Hen. VIII.
or by the course of the common law of the realm: apparently assuming, that the provisions of our common law were 1535.
equally applicable to Wales.

The seventh chapter of the same year, provides for the Cap. 7.
correction of abuses in the forests of Wales.

In the 14th chapter, concerning the custom of leather, Cap. 14.
strangers are spoken of, as contradistinguished from deni- Strangers.
zens; and that such strangers should pay 4*d.*, to be to the
commonalty of the town and port, toward the payment of
their fee-farm, and other their charges; and every denizen
not being a *freeman* of the port and haven, 2*d.*, to be to the Freemen.
commonalty. But *freemen* were to pay nothing.

In another part of the same statute, where strangers are
again mentioned, they are further named under the synonyme
of "merchant estranger;" to which class of persons these
provisions were no doubt intended to apply.

From these enactments, we may draw the inference, that
the sums directed to be paid to the *commonalty*, were to
be added to the *common stock*, and to be for the general
benefit of the town, applicable only to public purposes, not-
withstanding any modern doctrine to the contrary.

The *freemen* of the port and haven here mentioned, ob- Freemen.
viously mean the "*liberi homines*" of the common law; or
the persons of *free condition inhabiting* within the port or
haven.

Another instance also occurs in which provisions, relative Cap. 23.
to a subject matter altogether differing from any we have
before noted, are applied to the *inhabitants* of the districts Inhabitants
to which they apply. They are contained in the statutes
for the preservation of havens in Devon and Cornwall, in
which the *inhabitants* of the port of Plymouth, and of
other towns and havens in those counties, are charged with
neglect in amending and maintaining those ports and towns:
from which it seems clear, that the charge of that mainte-
nance was assumed to be cast upon the *inhabitants*.

The statute for re-continuing liberties in the crown, pro- Cap. 24.
Sec. 6.

Hen. VIII. 1535. Corporate. vides, that all cities, boroughs, and towns *corporate*, shall have and enjoy their liberties and authorities, as they have been accustomed, without any alteration by occasion of that act.

Sec. 7. And in the next clause, all stewards, bailiffs, and other ministers of liberties and franchises, are mentioned.

Sec. 8. In the following section it is provided, that neither "the stewards nor bailiffs of any cities, boroughs, or towns *corporate*, set in any shire in this realm which hath privilege, should be compelled to attend or appear out of such cities, boroughs, or towns, wherein they *inhabit* ; but that every such city, borough, or town *corporate*, shall use their privileges and liberties as heretofore they have been accustomed.

Sec. 14. By the 14th section, all statutes relative to sheriffs, under-sheriffs, bailiffs, or other ministers, for pannels of *juries* and *due execution of writs*, and other things concerning their offices, should be extended to all stewards, bailiffs, and other ministers and officers of liberties and franchises having

Return of writs. Sec. 15. *return of writs*. And they are specially allowed to hold their offices for more than one year.

Sec. 16. The holding of the sessions of the peace is provided for.

Sec. 19. And the 19th section expressly provides, that nothing in that act contained should be prejudicial or hurtful to any city, borough, or town *corporata*, or "by what name or names soever, they, or any of them, be incorporated."*

Separate jurisdictions. From all these provisions, which are extended to Wales in the same manner as to all other parts of the realm, it is obvious, that the distinction between the shires, and the sheriffs and the justices jurisdiction within them, was kept separate and distinct from that of the cities, boroughs, towns *corporate*, liberties and franchises ; and that the separate jurisdiction depended chiefly upon the *return and execution of writs*, and the jurisdiction of the *justices* in their sessions, and otherwise. And in the last clause which we have quoted, the general

Return of writs.

* The terms—"by whatsoever name or names they were called," are, in the 32 Hen. VIII. cap. 42, applied to the Barbers' Company, although they were not incorporated.

terms are introduced with respect to the names of incorporation, to which we have referred, as so frequently occurring in the modern charters. Hen. VIII.
1535.

The 25th chapter directs, in general words, that all governors (an appellation which seems at that time to have been applied to all officers of the crown) of shires—cities—towns—hundreds—hamlets—and *parishes* (a term only then recently much introduced into statutes,* and subsequently into charters), who are directed to keep every aged, poor, and impotent person, who was *born* or *had dwelt three years* within the same limits, by way of voluntary or charitable alms in every city, parish, &c., so that none of them should be compelled to go openly in begging. And provisions are added, respecting sturdy vagabonds, and children under 14 years of age and above five, that live in idleness and be taken begging, may be put to service by such governors, &c., to husbandry, or other crafts or labours. And birth, or residence for three years, is made the foundation upon which the permanent abode of sturdy vagabonds is to be determined. All common dole, or alms, are prohibited, except to the *common boxes* and *common gatherings* in every *parish*. Cap. 25.

Parishes.

Born.

This statute, though now obsolete, will answer the purpose of establishing, that all the officers who presided in the different divisions in the country, were treated as the king's officers. And it should be observed, that *parishes* are here added to the common law partition of the country into shires, cities, towns, hundreds, and hamlets. From this period a confusion arose, in thus mixing together the common law divisions of the county, and the ecclesiastical, of which the parishes are a part: and which confusion has continued to the present day, and probably will continue, until some decisive course is adopted of again dividing them; and thus extricating many public acts from the anomalous intricacy in which they have for centuries been involved from this cause. King's
officers.

Parishes.

* Vide etiam, ante, p. 355. Seiden defines a parish as a precinct within a diocese, which comprehended one or more villis, or a lesser territory.—Sel. de Dec. c. 6, sec. 3. See also, 5 Co. 67 A. Fleta, 4, c. 15, sec. 9.

Hen. VIII. The settlement of the *poor* in the places in which they had
 1535. been *born*, or had *resided* for a limited period, originally by
 the common law, for a year and a day, is by this statute
 altered to three years; and there is an express reference to
 the *common boxes*, and the *common gatherings*, which we
 have before found to exist in many boroughs, and no doubt
 they did in all, under the name of the "*common stock*;" from
 which all the common burdens were paid, as well as the
 poor supported. Thus by this statute, amongst others, the
 doctrine we have before contended for, with reference to
residence, and the connexion of that doctrine with the early
vagrancy. Saxon laws against *vagrancy*, out of which has also sprung
 the connecting link with the poor laws, is clearly confirmed;
 as well as the fact of the support of the poor out of the
 common fund of the borough, which was therefore in every
 sense a public fund: and it is obvious, that the connexion
 with *parishes* arose out of the ecclesiastical property, which
 was frequently excluded from the borough, being required
 to be included in the common charge, after it fell into lay
 hands, upon the dissolution of the monasteries. And there-
 fore the division of the *parish*, which included the ecclesias-
 tical lands, as well as the other, was introduced about this
 period of the Reformation.

We have throughout our researches contended, that the
 same system in principle applied as well to Ireland, Scotland,
 and Wales, as to England. Many of the statutes which we
 have quoted in this reign, have already confirmed that posi-
 tion with respect to Wales.

Wales. The 26th chapter of the 27th of Henry VIII., is a further
 Cap. 26. and decisive confirmation of that assertion, although it ap-
 pears that some usages had been introduced into that prin-
 cipality, which materially differed from the customs in
 England.

The preamble of the act, however, will best explain its
 objects, and describe the state of Wales at that time.

"Albeit the dominion of Wales justly is, and ever hath
 "been *incorporated*, annexed, united, and subject to, and
 "under the imperial crown of this realm, as a very member

“ and joint of the same, wherefore the king’s most royal
 “ majesty, of mere right, is very head, king, lord, and ruler:
 “ yet notwithstanding, because divers rights, usages, laws,
 “ and customs, be far discrepant from the laws and customs
 “ of this realm; and also because the *people* of the same
 “ dominion daily use a speech nothing like the natural
 “ mother tongue used within this realm, some rude and
 “ ignorant people have made distinction and diversity
 “ between the king’s subjects of this realm, and the subjects
 “ of the dominion and principality of Wales, whereby great
 “ discord hath arisen;” and therefore it is enacted, that
 Wales should be from thenceforth *incorporated*, united, and
 annexed with England. And that all persons *born* and to
 be *born* there, should enjoy and inherit all the freedoms,
 liberties, &c. as other subjects of this realm. And that the
 laws and tenures of England should be used in Wales.

Hen. VIII.

1535.
Wales.Incorpo-
rated.

And by the 3d section, provisions are made for the Lord-
 ships Marchers, uniting some to different shires, and dividing
 others into particular counties; and certain townships, pa-
 rishes, *commotes*, and *cantreds* are mentioned, including the
 principal boroughs in Monmouthshire: all of which are
 declared to be *gildable*, and to be taken as parts and mem-
 bers of the shire of Monmouth; the borough of Monmouth
 being the shire town.

Sec. 3.

The 4th section, amongst other things, provides, that
 the *inhabitants* of the county of Monmouth shall be obe-
 dient to the king’s officers.

Sec. 4.

Inhabi-
tants.

Similar provisions are made in succeeding sections for
 Brecknockshire, Radnorshire, Montgomeryshire, Denbigh-
 shire, Glamorganshire, Carmarthenshire. And as to Pem-
 broke, Cardigan, Merioneth, there are like clauses, that
 the *inhabitants* of those counties, and all justices, com-
 missioners, *sheriffs*, *coroners*, *escheators*, *stewards*, their
 lieutenants, and all other officers and ministers of the law,
 should keep the sessions, courts, hundreds, *leets*, sheriff’s
 courts, and all other courts, in the English tongue. And all
 misruled and suspect persons are to be put by the sheriff
 under common mainprise, and surety of personal appearance,

Hen. VIII. as they did within every of the then shires of North Wales.

1535.
Wales.
Sec. 26.
Hundreds.

Members
wages.

Court
leet.

By the 26th section, provision is made for the further division of Wales into hundreds;* and by subsequent clauses for the election of two knights for each of the shires, and one burgess for each of the boroughs, *as they are chosen in England*. The knights' fees also are to be levied as in England; and the burgesses' fees *as in the other ancient boroughs in the different shires*. And the Lords Marchers are to keep all their liberties, and their courts barons, *courts leet*, and *law-days*, with waife, strays, infangthef, outfangthef, treasuretrove, deodands, goods and chattels of felons, and of persons condemned or outlawed of felony of murder, or put in exigent for felony or murder; and also wreck de mer, wharfage and custom of *strangers*, as they had in time past.

Commotes.

Cantreds.

It will be observed in this statute, that the ancient division of Wales into *commotes* and *cantreds* is repeatedly mentioned; the former being a name which frequently occurs in the municipal documents of England, as well as in those of Wales. The latter being only another term, derived from the Latin, for *hundred*, with which it is used synonymously in some parts of this statute.

Inhabi-
tants.

The distinction between the *boroughs* and the *gildable* is also distinctly marked in this law: and the *inhabitants* are mentioned as the object of its provisions, in the same manner as we have seen in almost every document we have quoted, whether general, or particular—public, or private.

The courts *leet* and *law-days* are also mentioned; not as novelties, but as the ancient establishments of the country.

Sureties.

The giving *mainprise* and *surety* for personal appearance, as was required in England by the law of the court *leet* and *view of frankpledge*, is also expressly referred to, as having previously existed in the then shires of North Wales. The

1536.

* By the 3d chapter of the 28th of Hen. VIII., further authority is given to the king for three years, to allot newly the towns in the shires and marches in Wales, notwithstanding the statutes; and it was further continued for three years by the 11th chapter of the 31st of Hen. VIII.

"ancient boroughs" are also distinctly referred to, as well as the ancient privileges of waif, stray, infangthef, outfangthef, &c. From all of which it seems obvious, that the institutions in Wales had originally been the same as those in England; although they had been somewhat varied by particular customs, which it was the object of this statute to repress, and to restore both countries again to similar laws and practice. But it should be remarked, as a proof of the subserviency of the legislature at that time to the will of the king, that this statute closes with the striking clause, that the king might suspend or revoke any part of it.*

Hen. VIII.

In the statute giving the small monasteries to the king, bodies politic and *corporate* are expressly mentioned.

1535.
Cap. 28.

The fifth chapter of the 28th of Henry VIII., relates to *apprentices*; a subject which had before so frequently been under the consideration of the legislature, and the object of its enactments.

1536.
Cap. 5.
Apprentices.

We have already observed upon the 19th of Henry VII. chap. 7, relative to the guilds.

The 22d of Henry VIII., chap. 4, passed for the prevention of exactions levied upon *apprentices* by the masters, wardens and fellowships of *crafts*, and rulers of guilds and fraternities, under the pretence of ordinances made by them, after the statute of Henry VII., in diminution of the prerogative of the king, and against the profit of the people, and by which they had directed every apprentice to pay at his entry certain sums, according to their own sinister mind and pleasure, contrary to the meaning of that act, and to hurt of the king's subjects:—and by that act it was therefore enacted, that no master, warden, &c. should take for the entry of any apprentice beyond a sum specified in the act.

1530.
Cap. 4.
Apprentices.
Crafts.

But it is recited in the 28th of Henry VIII., that since those acts, the masters, wardens and fellowship of *crafts* had by cautil and subtil means compassed and practised to

1536.
Crafts.

* And as a further proof of the servility of Parliament at that time, in the 31st year of Henry VIII., chap. 8, the king is authorized, with the advice of his council, to issue proclamations, under such penalties and pains as to him should seem necessary, and which should be observed as though they were made by act of Parliament.

1539.

Hen. VIII. elude those statutes, causing divers '*prentices*, before they '*Prentices*. be made *free* of their occupation, to be *sworn* at their first entry, that they shall not set up any shop, house, or cellar, nor occupy as *freemen* without the license of the master, warden or fellowship, upon pain of losing their freedom:— to remedy which it was provided, that no master, warden or fellowships of crafts, nor any rulers of fraternities, guilds or brotherhoods, should from thenceforth compel any apprentice to take such *oath*, nor by any means exact from him any sum for his freedom or occupation.

Freedom to trade. In this statute the freedom of the apprentice is dealt with, as previously noted in this reign, in connexion with the right of trading, with which it anciently had no direct connexion, nor any other link than the one to which we have before referred, of *villains* not being able to trade, which therefore made freedom a necessary pre-existing qualification for a trader.

1540. Cap. 16. In the 32nd year of this reign another statute concerning strangers was passed, reciting those of the first of Richard III., the 14th, 15th, and the 21st of Henry VIII.

Strangers. Upon the two former we have before observed. As to the latter, it recited a decree in the Star Chamber, that no stranger-artificer, *inhabiting* in any borough, should keep more than two servants, being strangers born out of the king's allegiance; and that such *strangers*, if made denizen, and inhabiting in London, and keeping house, or occupying their trade, should be *contributors* with subjects who were artificers, paying, bearing, and sustaining, all charges as other subjects, otherwise not to occupy any handicraft. And that **House-holders.** such strangers and denizens, *householders*, should, upon lawful warning, present themselves in the common hall, to be *sworn* to their allegiance to the king; and not being a *householder*, should not set up any shop; and should not assemble in any company, fellowship, congregation or conventicle, but only in the common hall of the crafts as they should be warned. Which decree was confirmed by that statute.

Letters Patent. The 32nd of Henry VIII. further recites, that those wholesome and beneficial acts, had been infringed and frustrated

by letters patent, providing that every denizen should *be as free as an Englishman naturally born* within the king's dominions, by reason whereof the denizens had refused to obey those statutes. For a reformation of those abuses, it was enacted, that all strangers made denizens should be obedient to those laws, notwithstanding such letters patent; unless the king should grant any special liberties or privileges. Hen. VIII.
1540.

From the expression which occurs in this statute, that the Freemen. denizens had obtained patents "to be as free as any Englishman naturally born," it is clear, that the freedom then alluded to was that of *free condition* under the common law:—and therefore, notwithstanding the two or three previous passages which we have found in the statutes, in which the freedom appeared to be applied to the right of trading, it is clear that they ought to be explained in the manner we have before suggested with reference to the doctrine of *villainage*; and that the old law relative to the ancient "*liberi homines*" was still in force:—and therefore those terms in the statute meant persons *free*, by condition in life, from *villainage*; and not the freemen of any corporation, as supposed in modern times.

The 20th chapter of the same year, concerning the privileges and franchises which belonged to religious houses, transfers them to the king. Cap. 20.

And the second section expressly relates to the temporal liberties and jurisdiction belonging to the sites, circuits, and precincts of monasteries and abbeys, &c.: which are also placed under the order and governance of the king's general surveyors. Sec. 2.

The stewards, bailiffs, and other officers, are directed to be attendant and obedient to the king's courts. And that no sheriff should intermeddle with them. Sec. 3.

And all persons and *bodies politic*, are authorized to use all liberties, &c., which they have by the king's letters patent, or by the authority of Parliament. Sec. 4.

The 40th chapter of the same year, relates to *physicians* and their privileges. The preamble reciting, that the president Cap. 40.
Physicians.

Hen. VIII.

1540.
Corpora-
tion.Watch
and ward.

of the *corporation* of the commonalty and fellowship of the science and faculty of physic in the city of London, and the commons and fellows of the same, were hindered in attendance upon their patients, by reason that they are at many times compelled—as well within the city of London and its suburbs, as in other towns and villages—to keep *watch* and *ward*, and to be chosen to the office of constable, and other offices. And it was therefore enacted, that they should be discharged from watch and ward, and the serving of the office of constable, or any other office.

Name. In this statute, the College of Physicians, not having any municipal jurisdiction, is simply described as a corporation, without which it would have had no existence at all. For it was not like the aggregate body of a city or borough, where the inhabitants were, by the common law, recognized as an aggregate body, subject to common burdens, both pecuniary and personal; but merely a congregation of individuals united together by the act of incorporation—by which name, therefore, it could alone be designated.

Scot and lot. It is a striking confirmation of the account we have before given of the ancient law with respect to *scot* and *lot*, and of some of its duties continuing in existence even to this time, that the physicians are thus described by the Legislature, as then actually performing *watch* and *ward* and the office of constable, and other offices—part of the important functions constituting the *lot*, which it was the duty of every man, high and low, to perform, in the place in which he *resided*.

Cap. 42. By the next chapter but one, reciting that there were two Barbers. corporations in London, the one the barbers, the other the Surgeons. surgeons—the first being incorporated, to sue and be sued by their corporate name, by charter of the first of Edward IV., and the other not being incorporate—it was enacted, that those two companies and their successors, from thenceforth,* should immediately be united, and made one entire body corporate, and one commonalty perpetual, by the name of the masters or governors of the mystery and commonalty of barbers and surgeons; that they should have a common seal,

* Mad. Fir. Bur. p. 30.

to serve for the business of the company and corporation for ever. The "*freemen* of the corporation, after the custom of the city of London," are expressly mentioned.

Hen. VIII.

1540.

Freemen.

This also, like the physicians', is a mere corporation; and therefore the grant to them is not to their *heirs* and successors, as in the case of municipal corporations, where each individual would, besides the rights which he took by succession from his predecessors, have also privileges as an individual, which he derived from his ancestors—and which accounts for that form of grant to the mayors and commonalties of cities and boroughs; but here the grant is solely to the corporation and their *successors*.

Heirs.

Successors.

It should be remarked, that the "*freemen*" of the surgeon and barbers' company are described as being made "according to the custom of the city of London"—from which it is obvious, that their freedom, like the freedom of trade to which we have before adverted, was, in truth, still to be referred back to the early law of the country, and was connected with the correlative doctrine of *villainage*: upon which, we venture to assert with confidence, the whole of this system was founded.

The 43rd chapter in the same year, relates to the *shire days* for the county palatine of *Chester*, and commences by reciting, that there had theretofore been eight shire or county days, at which the gentlemen freeholders and suitors of the county were bound, of ancient custom and duty, to appear and give their attendance to serve the king; which number of days being found inconvenient, it was enacted, that for the future they should be holden only twice in the year, at the Michaelmas and Easter sessions, as used in the county palatine of Chester.

Cap. 43.

Chester.

Thus the county court in Chester, which was for the trial of civil pleas, was, according to the provisions of Magna Charter with respect to the leet and tourn, directed to be held only twice a year, at Michaelmas and Easter.

In the first chapter of the 33d year of Henry VIII., the justices of the peace within the cities, boroughs, towns, and

1541.
Cap. i.

Hen. VIII. franchises, are mentioned ; but nothing is said of towns

1541. *corporate*.

Cap. 4. And nearly a similar description occurs in chapter four of the same year ; in which all pewterers are prohibited from taking any *stranger, born out of the realm*, as an *apprentice* or journeyman.

Cap. 9. Bowyers. The ninth chapter of the same year, relating to the maintenance of archery, recites in the second section, that many bowyers, &c. *inhabited* near the city of London in the suburbs, being *no freemen* of the city, nor bearing neither

Scot and lot. *scot and lot*, nor other charges within the city, as other citizens and freemen of the city do, and are bound by their oaths to do. And which citizens and freemen of the city, of the

Dwelling. several mysteries and crafts have been brought up as *apprentices* from their youths, and *dwelling within the freedom of the city*, are always in readiness to furnish the king's affairs when they shall be commanded ; by reason of which resort and abode of such foreigners and strangers, of such mysteries and crafts, other cities, towns, villages, and places within the realm are unfurnished of artificers and craftsmen, to the great decay of archery. And the statute then goes on to provide for the having of bows for themselves and their children

Butts. and servants—and that butts should be made in every city, town, and place, by the *inhabitants*, according to the law of **Inhabitants** ancient time used—and that the *inhabitants* and *dwellers* be compelled to continue such butts, and exercise themselves in long-bow shooting.

Regulations are afterwards made for the bowyers *dwelling* out of the city and within it.

And reference is again made to their not being *freemen* of the city, or *bearing scot and lot*. And offences, under this statute, committed in any franchise, are to be inquired into at the *leet* and *law-day*.

Leet. Thus we find that the system of the *leet* was in full exercise at this time—that the duties of bowyers, like that of all other persons, were defined by the place in which they *inhabited* ; that the support of the butts and other common

burdens, was to be borne by the *inhabitants* and *dwellers*—Hen. VIII.
1541.
that the *freemen* and *citizens of London* were at that time to Inhabi-
tants and
Dwellers.
London.
bear *scot and lot*; and that they were *dwelling within the*
freedom of the city; a circumstance and a form of expres-
sion by no means to be overlooked. For the reasonable
ground upon which their *residence* is required is distinctly Freemen.
stated, viz., that “they are always in readiness to furnish
the king’s affairs;” and the nature of their freedom is ex-
pressly defined, because it is called, the “freedom within
the city,” which clearly imports a *freedom connected with*
actual residence within the city—by virtue of which, they
were exempted from all duties personal and pecuniary,
within the county at large.

In the bill for the household, the terms which are applied Cap. 12.
to the residence of the king are “demurrant” or “abiding.”

And the persons referred to in the bill respecting worsted Cap. 16.
yarns in Norfolk, are the *inhabitants* and *dwellers* there.

It is a singular circumstance, that the same test which is Residence.
applied to the doctrine of settlements, relative to the poor,
should also be applied to the judges of the land; for the
statute, in the 24th chapter of this year, which prohibits judges Cap. 24.
from being justices of assise in their own county, defines
the county as the place where the judge was “*born or in-
habiting*.” But we must remember, that in truth there is no
other mode of describing a place to which a person belongs.
And when the early charters speak of the *men* of any par-
ticular place, they must mean those who were *born* there;
and so in the strictest sense “belong to,” or “are of” the
place:—or it must include those persons who had had for
more than a year, a permanent residence there; and, who
being *resiants*, were after that time bound to be *sworn* and
enrolled in the place—and after such ceremonies he also
might be truly said to be permanently one of the place.
And thus it is that the harmony of our institutions, always
referring back to the original principles, was continued for
so many centuries; and the Legislature adopting in many
instances the language, and in most instances the prin-
ciples and practice of the common law, so perpetuated

Hen. VIII. one uniform system. And whether it related to the poor or
 1541. to the rich—the peasant or the judge—the resiant or the
 vagrant—the civil or criminal jurisdiction—the duties in the
 county at large, or the particular privileges in cities, bo-
 roughs, or franchises—they all had one common origin and
 object—*local permanent residence*.

The same statute contains a proviso that it shall not ex-
 tend to any mayors, sheriffs, recorders, stewards, bailiffs,
 Born. sextons, or other officers, being *born* or *dwelling* within any
 Dwelling. city, borough, or town. And it is a curious instance of per-
 severance in error, that notwithstanding the Legislature did
 Corporate. for a considerable length of time omit the term "*corporate*,"
 in the enumeration of cities, boroughs, and towns—as if from
 the complaints which had been made against corporations
 they had got into discredit;—yet the editors of the Statutes
 have again, in this part of their compilation, introduced
 into the margin the word "*corporate*," although it is not
 justified by the text,* as we have before pointed out in the
 reigns of Richard II. and Henry IV.

Cap. 27. The 27th chapter of the same year, relative to the leases of
 hospitals, colleges, and other corporations,† reciting, that
 by the common law such leases made by the majority were
 good—but that the founders had provided, that if one dis-
 sented they should not be made—provides for the avoiding
 the mischiefs arising therefrom; and for the due *execution*
of the common law universally within this realm, in one con-
formity of reason to be used;—that all rules, &c., made by
 such founders, whereby the grant, lease, gift, or election of
 the governor, with the assent of the more part should in
 anywise be hindered or let by any one or more, being the
 lesser number of the corporation, *contrary to the form, order,*
and course of the common law, should be void.

Notwithstanding municipal corporations had at this time
 long existed, yet the Legislature seems still to have clung to
the notion to which we have before so frequently referred,

* Vide ante, p. 717—781.

† This statute adds to the terms "other corporations," the passage to which we
 have referred so frequently, as adopted by Queen Elizabeth and the Stuarts in their
 charters, "by whatsoever name they be incorporated."

that the early corporations were chiefly confined to the ecclesiastical bodies; for the title of this statute refers, generally, Hen. VIII.
1541.
Ecclesiastical corporations.
to all corporations, but the preamble relates only to "deans, " wardens, provosts, masters, presidents, or other governors " of any cathedral, church, hospital, college, or other corporation," all of an ecclesiastical character; and by the ordinary rules of construction, the more general term of other corporations would be limited to those of the same kind which had been enumerated before.

In the same manner, the term "corporation" is applied, in the 29th chapter, to religious persons: as to whom it is enacted, that when they are removed from one corporation to another, they are enabled to inherit, purchase, sue, and be sued. Cap. 29.
Religious persons.

In the 32nd chapter, express provision is made, that the vicar of the church of Whitegate, in the county of Chester, shall have *perpetual succession*, and be called "vicar of the " parish church of our Blessed Lady the Virgin of Whitegate," and by that *name* shall sue and be sued. Cap. 32.
Vicar incorporated

In the 33rd chapter, concerning exactions made by the mayor of Kingston-upon-Hull, a new term is applied to those who are to enjoy the privileges of the place, and those who are not; and they are contradistinguished from each other by the terms of "persons privileged;" and "persons not privileged." Cap. 33.
Privileged.

The 36th chapter provides for the repairing of Canterbury, Rochester, Stamford, and divers other towns. Cap. 36.

The 10th chapter of the 24th and 25th of Henry VIII., relative to the making of coverlets in York, recites in the commencement of the second section, that *apprentices* and others expert in that occupation, had withdrawn themselves from the city of York, and people *inhabiting* in the villages and towns had intermeddled with that craft and occupation, having little experience therein, and not bound to their rules and ordinances, and make imperfect coverlets, *hawking** them 1542-3.
Apprentices.
Inhabiting.

* If an inhabitant in the country goes with wares in the same county from one house to another to sell them, and not in open markets, he is a rogue within the statute of the 39th of Elizabeth, chap. 4.—Jenk. 7 Cent. p. 319.

Hen. VIII. abroad in the country to villages and men's houses, putting
1542-3. the same naughty ware to sale secretly, to the great im-
Inhabitants poverishment of the *inhabitants* and city; for remedy whereof
 it was enacted, that no persons *dwelling* and *inhabiting*
 within the county of York, should make any coverlets for
 sale, unless he be *inhabiting* or *dwelling* within the city of
 York, or the suburbs.

This is another instance of the practical application of this
 new law to the persons *inhabiting* and *dwelling*; and states
 the inconveniences resulting from unrestrained hawking, and
 is probably the commencement of the enactments in restraint
 of it.

Chester. There is also, in the same year, a statute for making knights
Cap. 13. and burgesses within the county and city of *Chester*, which
Inhabitants recites the petition of the *inhabitants* of the county palatine,
 that it has been always hitherto exempt and excluded out
 of the high court of Parliament from having any knights or
 burgesses there; by reason whereof the *inhabitants* have
 hitherto sustained manifold disherisons, losses, and damages,
 as well in their lands, goods, and bodies, as in the good,
 civil and politic governance and maintenance of the com-
 monwealth of their county.

And forasmuch as the said *inhabitants* have always
 hitherto been bound by the acts and statutes made and
 ordained by the king's highness and his most noble pro-
 genitors, by authority of the said court, as far forth as other
 counties, cities, and boroughs have been that have had their
 knights and burgesses in the court of Parliament, and yet
 have had neither knight nor burgess there, the said *inhabi-*
tants, for lack thereof, have been oftentimes touched and
 grieved with acts and statutes made in that court, as were
 derogatory to the most ancient jurisdictions, liberties, and
 privileges of their county, as prejudicial to the common-
 wealth, quietness, rest, and peace of the *inhabitants* within
 the same.—For remedy thereof it was enacted, that the

Knights. county palatine of Chester should have two knights for the
Burgesses. county, and two citizens to be burgesses for the city of
 Chester; the election to be made under like manner and

form as is used within the county palatine of Lancaster, *or any other county or city within the realm of England*, the knights and burgesses having the same liberties, advantages, dignities, privileges, wages, fees, and commodities, as other knights and burgesses had. Hen. VIII.
1542-3.

Here also the *inhabitants* are the petitioners, and the persons for whose benefit the privileges are granted. The importance of being represented in Parliament is also distinctly recognized. The two citizens who were to represent the city are expressly declared to be the burgesses for the city—they and the knights were to be elected in the same manner as in any other county or city in England—showing clearly that the elections were at that time assumed to be all alike—and the members are all directed to receive the same wages as other members: so it must also be inferred, that the wages were at that time paid to the members, as they had been from the commencement of parliamentary representation. Wages to
members.

In the act for the discharge of the sheriff's accounts, the sheriff's *county-days*,—his *turns*,—and the hundreds,—are mentioned; as well as wapentakes, and lathes. Cap. 16.

In the 18th chapter, all the liberties of the mayor and aldermen of *Canterbury* are confirmed; and it is added that the king may remove them upon cause. No *foreigner*, not *being free of the city*, is to buy or sell (saving victual) to another *foreigner*,—nor shall keep any shop, or use any mystery within the liberties thereof, without the license of the mayor and aldermen, or the major part of them. Cap. 18.
Canterbury
Foreigners.

The 22nd chapter relates to fines levied by married women, in the cities, boroughs, and towns, which are directed to be taken before the mayor, aldermen, recorder, chamberlain, or other head officer of such city, borough, or town *corporate*, according to their usages and customs. Cap. 22.

The 24th chapter contains a singular provision in a bill for the assurance of certain lands to Serjeant Hinde, providing that the sheriff and two knights of the Parliament for the county of Cambridge should be *incorporated* by the name Cap. 24.
Cambridge
wardens.
Incorporated.

Hen. VIII. of the "wardens of the wages;" who were to have a rent
1542-3. payable out of the shire manor.

Cap. 26. The 26th chapter, containing ordinances for the prin-
Wales. cipality of Wales, provides, amongst other things, that all
Stewards. *stewards* of any lordships or manors in Wales, should hold
Leets. their *leets*, *law-days*, and courts baron, belonging to them ;
and that the *sheriffs* should hold their *tourns* at Michaelmas
and Easter, as well as their county and hundred courts ; and
that the mayors, bailiffs, and head officers of corporate towns
might hold pleas according to their customs. And the 17th
section provides, that inasmuch as there are many small
Boroughs. boroughs and towns *corporate* which have their commence-
Towns. ment by charters, it is provided that the king should have
corporate. power, by his letters patent, at any time within seven years,
to dissolve such boroughs and towns *corporate*, and to elect
any other boroughs or towns corporate which might be con-
venient ; and that suspected persons should be put under
common mainprise.

Sec. 110. The 110th section provides, that all the king's subjects
Resiants. and *resiants* in Wales, should find at every Parliament knights
for the shire, and citizens and burgesses for cities and towns.

1543. The 11th chapter of the 35th of Henry VIII., for the pay-
Cap. 11. ment of the fees and wages for the knights and burgesses for
Inhabitants Wales, provides that they shall be paid by the *inhabitants*,
who are also specially directed to 'be summoned to come to
the election, and give their voices : and two justices are to
lot and *tax* every city, borough, and town wherein they do
inhabit, for the portion and rates belonging to the cities and
boroughs, which are to be taxed on the *inhabitants* by four
or six discreet and substantial burgesses.

1545. The fourth chapter of the 37th Henry VIII. relates to col-
Cap. 4. leges, free chapels, chantrys, hospitals, fraternities, brother-
hoods, guilds, and stipendiary priests, which are stated to
have perpetuity for ever ; some of which had been *incor-
porated*, established, founded, erected, or made, by divers
names, surnames, degrees, and *corporations*, to have perpe-
tual continuance for ever, some by the license of the king,

and some by feoffment, wills, &c., and the donors having expelled some of them—remedy is prayed for the same. Hen. VIII.

The 14th chapter expressly creates a corporation or body politic of two persons, to be called for ever the “masters or keepers of the pier or key of Scarborough, in the county of York.” Cap. 14.
Scarborough.

The 18th chapter authorizes the king to make honors of the city of Westminster, the town of Kingston-upon-Hull, and his castle of Donington in Berks, and St. Osith in Essex. Cap. 18.

Cities, towns *corporate*, and bodies *corporate*, are all mentioned in the bill for the union of churches:—and cities, boroughs, and towns *corporate*, in the third section of the 23rd chapter. Cap. 21.
Cap. 23.

CHARTERS.

We now proceed to the charters of this reign, which however lessen in importance, as the incorporations are, at this period, clearly established.

There are three charters granted to the mayor, commonalty, and citizens of London—one in the first year, being a confirmation of that of Henry IV., which gave the tronnage to the city. London.
1509.

The second, in the 10th year, reciting the charter of Edward III. respecting St. Martin's-le-Grand, and granting, at the petition of the mayor and *commonalty*, and of the *citizens*, that all inquisitions should from thenceforth be of the *men* of the city, at the guildhall within the city, or at any other place thought most expedient by the justices, and not elsewhere. 1518.
Common-
alty.
Men of
London.

The third, in the 22nd year, relates to the tronnage; and recites a grant to Sir William Sydney—a charter of Edward II.—and also the charter of Henry IV., and confirms them; and also grants the weights and beams for weighing goods between merchant and merchant. 1530.

We also find, in the 13th year of this reign, an inquisition, in Latin, before the escheator of London, in which it is stated, that three messuages mentioned in it were held in 1522.

Hen. VIII. *free burgage*,* as *all the city of London was held*. And it
 Free bur- was further found, that it had been the immemorial custom,†
 gage. that every freeman of the city (*liber homo*) should be able to
 Liber homo alienate and give his lands within the same city, in *free*
burgage to be held of the king.

It is also stated, that a precedent‡ occurred in this reign,
 where a citizen of London sued another citizen in the com-
 mon bench; that the mayor and aldermen of London were
 desirous that the matter should be compromised, which one
 Disfran- of them refused, and they *disfranchised* him. Whereupon a
 chised. writ was directed to the mayor to restore him to his fran-
 chise, and a fine of 100 marks was assessed upon each of
 them who were parties.

In the second of these charters we have the expression
 Men. again occurring, of "*the men of the city*," upon which we
 have already commented; it is only necessary here further to
 remark, that this is a term so commonly applied to the bur-
 gesses of every borough, that it can leave no doubt they
 were in effect all the same; and it is important to observe,
 that it also establishes, that the freemen of London continued
 the same as they were originally: of which it is a strong con-
 firmatory proof, that, in the document we have quoted, the
 Liber homo ancient legal term of "*liber homo*" is used for the description
 of a *freeman*.

We have before observed, that if *burgage* tenure ought to
 have existed any where, it should have prevailed in London,
 as that place was held by *burgage tenure*,§ of which the
 Burgage document we have quoted is a confirmation, bringing the
 tenure. proof down to this reign.

OXFORD UNIVERSITY AND CITY.

1523. If any thing had been wanting to secure the temporal
 power of the university, it was amply supplied by a charter
 granted by Henry VIII., in the 14th year of his reign, at the

* Mad. Fir. Bur. p. 23. Trin. Communia, 13 Hen. VIII. Rot. 12.

† In a case of gardship, it was stated, that "tenure in *burgage* is common socage."
 Jenk. 3 Cent. fol. 127.

‡ Cro. Eliz. fol. 33.

§ Vide Sir Henry Calthorpe's Collection of the Customs of London, p. 103.

pressing instance of Cardinal Wolsey. It commences with a declaration of the universally acknowledged advantages which are derived by the state from having within it wise and learned men, such as have been produced from the university of Oxford, and proceeds to grant, that the chancellor, vice-chancellor, and his deputy, should be justices of the peace for the town of Oxford, and the four surrounding hundreds; as well as within the counties of Oxford and Berks;—a very considerable enlargement of their jurisdiction, it having only formerly extended over the town, the suburbs, and the hundred adjoining, which was held by Damory. As the town, in consequence of its being a borough, was exempted from the county, it was necessary that the jurisdiction over it should be given, as well as over the county; but why the hundreds are here mentioned, unless for greater caution, it would be difficult to say.

Hen. VIII.

1523.

Justices.

The charter then grants, that the chancellor might appoint a *steward* (an officer mentioned before in the charter of Edward IV., though not there expressly appointed), and also a sub-steward, and two or three persons skilled in the law, to hear and determine all treasons and felonies, with a *non-intromittant* clause as to the mayor and bailiffs of the town, and all justices of the peace; and enables the university to have a gaol within the town, for the custody of all persons entitled to the privileges of the university. And that the sheriffs, and all others, should make returns of all penalties, &c. to the chancellor, vice-chancellor, or his deputy. That all fines and amerciaments should be given to the university, as well as all deodands, goods of felons, &c. within the *town* of Oxford and its suburbs. That the chancellor, scholars, and their servants, ministers, farmers, and tenants, wherever found, should be exempted from all prises, chiminages, &c. for all their goods.

Steward.

Non-intro-
mit.

A provision so extensive, including all the tenants, wherever they are, induces some doubts of its legality, and if not constantly allowed and confirmed by usage, it would not probably have been supported. Nor, indeed, could it have any pretence to legality, except upon the ground that these

Hen. VIII. were dues belonging to the king, who could of course abandon
1523. his own right.

Upon the same ground, the king abandons his right of prescription and purveyance within 20 miles adjoining the university. And that every indictment of murder and felony, or riots, &c. within the *town*, suburbs, hundreds, and counties, against the scholars, or any one enjoying the privileges of the university, should, upon the certificate of the chancellor, vice-chancellor, or his deputy, to the mayor, aldermen, bailiffs, and justices, be delivered to the chancellor, &c.; and all other process superseded. And for putting an end to all ambiguities and controversies which could arise between the university and the burgesses, so that the students might live in peace, it was directed, that the chancellor—the scholars—their ministers and servants—their families, and all others who were registered in the university, should enjoy its liberties and privileges.

**View of
frank-
pledge.**

The *view of frankpledge* within the precinct of the *university*, is spoken of for the first time; and power is given to the chancellor to make precepts and writs, and to do all acts which belong to a view of frankpledge.

But what those acts were, or who were to be the suitors, is not mentioned:—and it would be difficult to imagine how such a body as the university could execute this privilege; or what benefit it could be to any but the *house-keepers* of the university, who might, by such means, be exempted from suit at the sheriff's tourn, or at the leet of the borough. But it could not apply to the whole body of the university, or to the bulk of the students, who were *lodgers* and *inmates*, and *not householders*.

Privilege. It was likewise provided, that if any person having the privilege of the university should be imprisoned in any part of England, he should be delivered up to the chancellor, to be dealt with according to the law of the land, and the privileges of the university.

**Buy and
sell.** That the chancellor, scholars, their servants, ministers and families, might be enabled to buy and sell by retail and otherwise; and to exercise all trades within the

town and suburbs of Oxford, and all liberties and franchises which others had. And that they should be free from every contribution, payment, concord, or license, to be paid to the mayor, aldermen, bailiffs, or treasurer, or to the community of the town, for the liberty and franchise.

Hen. VIII.

1523.

That the chancellor, vice-chancellor, or his deputy, with the assent of the masters in convocation assembled, should have authority given to them for ordaining, making, and establishing *corporations*, statutes, and ordinances, with penalties, to bind all the *inhabitants* of the town, merchants, victuallers, and others, vulgarly called glovers, cordwainers, and chandlers, there *dwelling* (*commorantes*), and selling their goods exorbitantly, any statute to the contrary notwithstanding:—a direct exercise of the dispensing power of the crown, since declared by the Bill of Rights to be illegal.

Corporations.

The provision for the restitution of stolen goods, first granted in the charter of Edward III., is repeated. And the chancellor, vice-chancellor, and deputy, are, by a long clause, protected from any suit for any judicial acts done by them, whether justly or unjustly, as long as they obey the judgment of the proctors within the precinct of the university. The former clauses, as to taxing the scholars, and other privileged persons *dwelling* or *inhabiting*, are repeated. And if any of them were improperly taxed, the chancellor, vice-chancellor, or deputy, taking to them the president of Magdalen College, and the wardens of St. Mary College, of Winton, and of All Souls, should properly assess them. All murders, felonies, and offences whatsoever were, in the largest words, remitted to the scholars; and if any defect should be discovered in the charter, the chancellor of England should correct it without any further writ; and the charter closes with the usual *non-intromittant* clauses, and the provisions for securing all the privileges intended to be granted, notwithstanding any defect in the charter, and although no mention is made of the value.

Proctors.

Commorantes sive inhabitantes.

CAMBRIDGE.

It is said that the university of Cambridge was incorporated in this reign. We have examined the Patent Rolls, and have not been able to discover a charter of incorporation to that body.

1528. A decree was made in the Star Chamber, that no *stranger born* should keep in his service any servant being *stranger born*, above the number of two, at once;* but that nothing contained in that decree should be prejudicial to any strangers, artificers, denizens or not denizens, *inhabiting* within the university of Oxford or Cambridge.
1522. This decree was afterwards confirmed by Act of Parliament, wherein it was established, that no *stranger born*, being a *householder*, in any of the said universities, should, from thenceforth, retain in their service any journeymen or *prentices*, being *aliens born*, above 10 at once, upon pain, &c.:—
1529. and that the former Act, made in the 14th and 15th of Henry VIII. should endure for ever.
1540. Since that time, in another Parliament, it was enacted,
Dwelling. that no handicraftsman *dwelling* in the universities of Oxford and Cambridge, being a *stranger born*, denizen or not denizen, should keep any *prentice*, journeyman, or servant, above two at once, being *aliens born*, upon pain limited in the statute.

BRISTOL.

1511. The mayor, burgesses, and commonalty of the town of *Bristol*, received, in the third year of this reign, a confirmation of the charters which had been granted to them in the 3d and 15th of Henry VII.
1542. In this year, Bristol was made a bishop's see, and became a city.

POOLE.

This king also granted the fee-farm of the borough of *Poole* to his natural son Henry, Duke of Richmond and

* See also before, stat. 21, Hen. VIII. cap. 16.

Somerset; and a charter of the third year of this reign, containing an *inspeximus* and recital of the charters of 1454 and 1460, and confirming the privileges granted by them to the mayor, burgesses, and their successors. Hen. VIII.
1511.

Arthur Plantagenet, Viscount Lesley, vice-admiral of England, by a charter, reciting all the former grants—that of William de Montacute to the mayor, “*brethren*,” bailiffs, burgesses and *inhabitants* of Poole—and the confirmation by Henry VIII., by which they were excepted from all kind of jurisdiction and power of the admiral of England—declared that the privileges belonged to the mayor, brethren, burgesses, and *inhabitants*; and ratified and confirmed the same. 1527.

Inhabitants.

It is here recited, that the charter of William de Montacute was granted to the “*brethren*,” burgesses, and *inhabitants*; but nothing of that kind is stated in the extracts in Lord Glenbervie’s Reports;* and for aught that appears, this is the first place in which the term “*brethren*” was used. Indeed, it is not probable that it was so in fact, because, although that term might have become general in this reign, as appears by the statutes passed during it; yet there seems no reason for thinking, that it was in general use in the reign of Edward III., when the charter of William de Montacute was granted.

NEWCASTLE.

In the third year of this reign, articles for the government of the *brethren* of the fellowship of drapers in *Newcastle*, were made; which speaking of them as a then existing body, and referring to the election of the officers of the borough, under the common charter, as the old use and custom of the town, provided, that no brother of the society should take any *apprentice* for less than seven years, nor more than one apprentice at a time. And no person should be admitted into the fellowship, without having served that time to a brother, without the assent of the whole fellowship. 1512.

Apprentice.

The *apprentices*, and those who challenged their freedom

* Vide 2 Dougl. p. 238.

Hen. VIII. by patrimony, were ordained, under a penalty, to come for
1512. their freedom within a year.

Free. These provisions of themselves would seem to import, that those who were bound for seven years, and served a brother for that time, were entitled to be admitted into the fellowship; but those who were not so bound, 'or did not so serve, were not entitled, but were to be admitted by the consent of the fellowship—particularly as the first direction, respecting the *swearing* of the freeman, seems to import that all apprentices were to be *freemen*; and the clause, as to the seven years and the enrolment, expressly states, “that every apprentice shall be *free* at the end of his time for 13s. 4d. and a dinner.”

Borowes. It should be observed, that this article tends much to confirm the original nature of these institutions, in the manner we have previously explained. It requires that the apprentice's name and his “borowes” should be entered and *enrolled*. By the common law, every person *residing* in a place a *year and a day* was to be *sworn* and *enrolled*, and give “*pledges*” for his good conduct, and for his forthcoming at all times to answer the law. “Borhoe” is the Saxon term for a “pledge,” and therefore there can be no doubt that this passage refers to the ancient law; and confirms our previous assertion, that the *serving as an apprentice for seven years entitled a person by the common law to be treated as a freeman, and to be enrolled as such*; which was done by the warden of the craft instead of the king's officers for the town at large, for the ease and convenience of the members of that body:—and it was upon that principle the several trades under the sanction of the municipal governor of the place, were admitted and enrolled as freemen amongst themselves, it being immaterial where the admission, swearing and enrolment was effected, provided it was performed somewhere. It was less irksome and troublesome for them to do it amongst themselves, than at the general meetings of the burgesses; and the members of the craft were also best acquainted with their own members and their apprentices, and of course best able to see this public duty properly executed.

Appren-
tices.

A decree in the Star Chamber, in the seventh of Henry ^{Hen. VIII.} VIII., in effect re-established the manner of election of ^{1516.} mayor (or at least nearly so), as it was fixed by the articles in 1342:* but which it seems probable had been discontinued. The decree not only confirms the inference which arises from all the early charters of Newcastle, that *residence* was ^{Residence.} a necessary qualification for a burgess, but also explains most clearly what was the real origin of the qualification by ^{Apprenticeship.} *apprenticeship*.

The *free inhabitants* only were the *burgesses*: and consequently, no servant or *villain* of any gentleman or lord, as we have before explained, could be a burgess:—but if the lord so far waived his dominion over his *villain* that he could not retain him, such a person thereby became free;—*a year's residence away from his lord*, unclaimed, was sufficient to make him *primâ facie* free. Of course service for *seven years* as an *apprentice* was more than sufficient to make him so; particularly as it appears from the *Regiam Majestatem*, that *after seven years absence from his lord, the villain was for ever irreclaimable by any process*—hence it is that in this passage, in the decree where it is said that no gentleman's or lord's servant (that is, according to the old law terms, *servus* or *villain*) shall be a burgess; the exception is added, “unless he had served seven years' apprenticeship.”

With respect to the necessity of *residence*, upon which we ^{Residence.} have before commented, there can be no doubt but that originally, by the whole system of our law, as well as by the particular usages and customs of each individual place, *residence* was an indispensable qualification for enjoying its privileges—indeed, it was only by virtue of the person's residence in the place that he was subject to the jurisdiction and burdens of it, and consequently entitled to its privileges. The origin of these rights, before referred to, abundantly establish this: as well as many of the charters granted to the burgesses of Newcastle and the different companies within it—particularly that of the first of Edward VI., 1547, ^{1547.} ¹ Ed. VI. to the merchant adventurers, by which all the privileges are

* Vide ante, p. 655.

Hen. VIII. expressly confirmed to those "*inhabiting*" within the town.

Inhabiting. And the order for the fellowship of cooks in the 17th of
1575. Elizabeth, expressly excludes from the enjoyment of their privileges any of the brethren who should *depart from the town*, and *dwell elsewhere out of the town*. And the charter of the 42d of Elizabeth, speaks of the burgesses and other
1600. "*inhabitants*;" and requires that all those eligible to offices, should be burgesses *conversant and inhabitant* within the town: and as it afterwards speaks of a person being elected who was *absent*, it is clear that mere absence did not amount to non-residence.

This view of the subject, supported as it is by the history and principles of our common law, and the history of other boroughs—and confirmed by this document, clearly estab-
Appren-lishes, that *apprentices* who had duly served their time, were
tices. entitled to be admitted on the same ground as those *born* of free parents, which was in truth founded upon the common law, and not upon any corporate principle.

1544. It should be observed, in concluding our observations upon this place, that in a grant of this monarch, in the 35th year of his reign, to the mayor and burgesses of the scite of
Burgages. the Blackfriars, *burgages* in Newcastle were granted amongst other things.

YORK.

1517. Henry VIII., by his charter, in the ninth year of his reign,
Common granted to the citizens of *York*, a common council, to assist
council. the mayor, aldermen, and sheriffs; with the manner of their election out of the several crafts of the city; that is to say, two out of each of the 13 crafts of merchants, mercers, drapers, grocers, apothecaries, goldsmiths, dyers, skimmers, barbers, fishmongers, tailors, vintners, pinners, and glaziers; and one out of each of the 15 lower crafts—viz. hosiers, innholders, vestment makers, wax-chandlers, bowyers, weavers, walkers, ironmongers, saddlers, masons, bakers, butchers, glovers, pewterers, and armourers.

And that at their yearly assembly they should severally choose discreet and able persons to be searchers of their own

craft for the year following; that is to say, merchants and Hen. VIII. mercers, four—tailors, four—weavers, four—bakers, three—barbers, three—and every other of the said 13 and 15 crafts should name two; and likewise the next day present the same persons to the mayor, aldermen, and sheriffs, to be sworn to use and exercise all things belonging to their office for the common weal of the city.

And that the common council and the eldest searcher of 1518. every of the crafts should, in a peaceable manner, assemble before the mayor, aldermen, and sheriffs, in the guildhall, yearly, and there make solemn oath to choose four of the most able and discreet persons of the city, such as have not been mayor nor sheriffs; and that the aldermen and sheriffs, by their oaths and voices, should immediately the same day, choose and take two of the same four to be sheriffs for the year next ensuing, and swear them into their office as in time past.

And when any alderman of the city should die, leave, or *depart from his office*, that the common council and eldest searcher of every the 13 and 15 crafts, should assemble themselves before the mayor, aldermen, and sheriffs, for the time being, in the guildhall, at a certain day, by the same mayor to be assigned, and then and there make solemn oath to name and choose three of the most grave, discreet, and able *citizens*, to be aldermen; and that the mayor, aldermen, Aldermen. and sheriffs, by their oaths and voices, should the same day, ere they departed, choose and take one of the same three to be alderman.

That all the persons of the common council, and the eldest in office of every of the searchers, &c., should assemble themselves yearly before the mayor, aldermen, and sheriffs, in the guildhall, and make solemn oath to name and choose three of the most grave and discreet persons of the aldermen, such as have not been twice mayor, nor mayor within six years next before; and that the mayor, aldermen, and sheriffs, before they departed, should choose and take one of the three to be mayor for the year ensuing.

And that no other citizens, other than the common council

Hen. VIII. and the said searchers, should be present at any election of sheriffs, aldermen, or mayor of the city, or should have voices in the election of any of them.

LYNNE REGIS.

1524. This king, in the 16th year of his reign, granted to the *Inhabitants* mayor, burgesses, and *inhabitants* of the borough of *Bishop's Corporate. Lynne*, that they should for ever be one body *corporate*, and one perpetual *community* in name and deed: that they should have perpetual succession, by the name of "the Mayor and Burgesses of the borough of Bishop's Lynne, "in the county of Norfolk"—and plead and be impleaded—and be persons capable in law, &c.

1535. And in the 27th year of this reign, it was enacted by Parliament, that the king should have the manors of Linne Espiscopi and Gaiwood. And thereupon the king by his letters patent declared, that the *town* of Bishop's Lynne should be called Lynne Regis, and the burgesses, by the name of "the Mayor and Burgesses of the borough of Lynne "Regis, in the county of Norfolk."

KINGSTON-UPON-THAMES.

1542. We find, in the 34th year of this reign, amongst the collection of documents belonging to the corporation of Kingston-upon-Thames, and which were edited by Mr. Roots,* an exemplification of a warrant to the Treasury, respecting certain deductions to be made out of the fee-farm of the town. It recites a charter of Henry V.; and also that King Henry VI. by his letters patent, in the 19th year of his reign, granted *Freemen.* that the *freemen* of the town should be one body in right and *Corporate.* name, and one commonalty *corporate* for ever, of two bailiffs of the town; and that the *men of the town* should have perpetual succession; and they and their successors, by the names of "bailiffs and *freemen* of the town of Kingston-upon-Thames, in the county of Surrey," should be called and nominated, and might plead and be impleaded, &c.

We have examined the original Patent Rolls at the Tower,

* Vide Root's Charters, p. 64.

and after a careful investigation, are unable to find the slightest authority to warrant the claim of the above privileges at that period; which is another instance of the extraordinary inaccuracy respecting corporate rights. The only possible suggestion as to the ground of the error is a supposition that the charter of Kingston-upon-Hull might have been mistakingly applied to this place. Hen. VIII.

SEAFORD.

Henry VIII., in the 35th year of his reign, granted a charter to the barons and *good men* of Hastings, which commenced by reciting, "that his beloved barons, good men, and subjects of the Cinque Ports, in respect of many liberties and franchises which had been granted to them, were bound to find, at their own costs and expenses, 57 ships for 15 days in every year;* but that the town of Hastings, the most considerable of the Cinque Ports, by the flux and reflux of the sea, and by conflagrations there, had been impoverished, in consequence whereof, neither the town, barons, nor good men, had been able to find their portion of shipping; and that, in order that they might be more strongly bound to build ships for the future," granted to the bailiffs and barons of the town of Hastings, their *heirs* and successors, and to the *inhabitants*, tenants, *resiants*, non-*resiants*, and other *resiants* in the town, parish, and borough of *Sefford*, that they should be a perpetual and *corporate* town, of one bailiff and commonalty for ever. That the bailiff and commonalty should be of themselves a body corporate—should have perpetual corporate succession—and be for ever called and named, "the Bailiff and Commonalty of the town, parish, and borough of Seaford"—capable of holding and giving lands, that they should have a common seal, and plead and be impleaded by their corporate name. 1543.

That the *inhabitants*, tenants, and *resiants*, their *heirs* and successors, *dwelling* in the town, parish, and borough of Sefford, might be able to elect from among themselves, for ever, a fit person to be bailiff. Inhabitants
Corporate.

* See Domesday—Dover, fol. 71—Sandwich, 85—Romney, 86.

Hen. VIII.

Suits of
shires.

Powers are then given to that officer to hold a court, and to have cognizance of all real and personal actions arising within the borough. Freedom from toll and of all custom, &c.—and quittance from *suits of shires and hundreds* are also granted. And that neither the bailiff nor commonalty should be forced or compelled to come out of their borough, nor be impannelled upon any juries, assises, &c. That the borough of Seaford should from thenceforth be a member, annexed, united, and joined with the town of Hastings, and should contribute, by shipping, its share with the barons of Hastings; and that it should enjoy, in every respect, the same privileges as those of Hastings.

Having now concluded the Charters, it will be necessary only to add some extracts from the municipal documents of this period, and a few records relative to particular boroughs.

CANTERBURY.

In this reign an act of Parliament was passed for improving the river at Canterbury, which recited the petition of the mayor, aldermen, *citizens*, and *inhabitants*, and contained a further recital of the antiquity and importance of the city, similar to that of the charter of Edward IV.; and then enables the mayor, aldermen, *citizens*, and *inhabitants*, with the advice and assent of the Archbishop of Canterbury, and two or three knights, being justices of the shire of Kent, to deepen and enlarge the river. But it seems this act was never carried into execution.*

The controversy also, which appears to have existed so long between the prior of St. Gregory's and the mayor and commonalty, and which commenced in the reign of Henry III., and was renewed in that of Henry VI., appears in this reign to have been finally adjusted between the parties. The articles between them, made by the mediation of the prior of Christchurch, John Hales, one of the barons of the Exchequer, Christopher Hales, attorney-general, and Thomas Wood, esq., by the consent of the Archbishop of Canter-

* Somn. Ant. Cant. 21.

oury, are given by Somner.* They first state it to be agreed, that the monastery and all its houses were fully and entirely within the liberties and franchises of the city. And then they proceed,—“ that tenants *inhabiting* in the same tenements shall at all times do and owe their obedience unto the mayor of the city, and to the aldermen and other officers of the city and of the ward of Northgate for the time being, and shall be *contributory* to every charge within the city in likewise as all the other *inhabitants* shall be. And that the mayor and aldermen of the city and ward, and their successors, should execute their office within the monastery as they do in any other parts of the said city, except in the causes and articles following :—

“ It is agreed, for the quietness of the prior and convent, and their successors, that no person shall be arrested by his body within the monastery for any personal action, to be attempted by way of plaint before the mayor of the city, but in form following, that is to say, ‘ If any plaint be entered and affirmed against the prior, or his successors, or any person *inhabiting* or *abiding* within the monastery in such manner that the process and execution, according to the plaint, cannot be had and done upon the prior, his successors, or any such foresaid person then *inhabiting* or *abiding* within the monastery, that then, if the prior, his successors, or other person *inhabiting* or *abiding* within the monastery, having knowledge by the mayor, or by any of his officers thereof, by monition, to be given by the time of two days before the time prefixed for the appearance, he at the time of that monition being within the said monastery or elsewhere within the liberties of the city : if then the prior, the next court-day, after the summons, on the knowledge so given, put in pledges of right, according to the custom of the city, to answer to the plaints so taken and affirmed, that then no manner of arrest nor attachment of any of the bodies shall be put in execution within the monastery against the prior, his successors, or any such person *inhabiting* or *abiding* within the same.’ ”

* See Somn. Ant. Cant. App. p. 12.

Hen. VIII. And it is condescended, agreed, and determined by this composition, that every such monition or warning hereafter to be given against the priors, or any other person, spiritual or temporal, *inhabiting* or *resident* within the monastery, shall be good and effectual to be given to the party to be sued, or to any religious man of the same monastery then being a priest.

"It is agreed, that all the manual and necessary servants of the prior and convent that hereafter shall be *inhabiting* within any of the tenantries shall not hereafter be impannelled, summoned, amerced, or distrained for any manner of jury that shall be sued between party and party."

WELLS.

We have before observed, with respect to Newcastle, that every absence did not amount to non-residence, because it might only be for a temporary purpose; thus, in the records of *Wells*, in the 13th of Henry VIII., we find persons mentioned as being in the country—"in rure manentes."

1521. And in the 21st of Henry VIII. we find a singular entry with respect to Wells, in which the term is for the first time introduced of their being "*made*" burgesses, the former expressions being, as we have seen before, "that they were admitted into the liberty." The party pays a fine of 20s. for the extraordinary and illegal privilege of being excused from all offices that burgesses were obliged by their oaths to bear. We say illegal privileges, because the king even could not by his grant excuse persons from such offices;* but the special nature of this exemption is accounted for by the fact, that the person was elected *member* for Wells, and was admitted as a burgess only, for the purpose of bringing him within the words of the precept, which required that one of the *burgesses* should be elected. It was by irregular admis-

Made bur-
gesses.

Members.

* If the mayor and aldermen, or bailiffs, or the head of any corporation, exempts any of the burgesses from contributing to any public tax, it is a great oppression, for it tends to surcharge the others. The mayor of Lincoln was fined and imprisoned for this offence by the counsel, i. e. the opinion, of all the judges. Jenkins, 2nd century, 79 Ca. 44.—Nor could the king effect it by his charter, for it has been held, that "the king could not by his letters patent alter the law of the land." Jenkins, 2nd century. Fol. 97.

WELLS.

1135

sions of this kind, and for this purpose, that the abuse of non-resident burgesses, was gradually introduced.*

Hen. VIII.

In the same year, a letter appears to have been sent from the king, charging the mayor and commonalty to keep *watch* till Michaelmas by night and day.

Watch.

Regulations are also made with respect to the several trades in the town, and their dealing with *strangers*.—Confirmations are obtained of the charters.—A court is directed to be held once in the year, at which the tenants are to appear before the *steward*; and there is a special provision, that the seal is not to be put to any deed without the assent of the whole hall.

Steward.

Seal.

We have before remarked, that the term “made” was not until this period applied to the burgesses, and the term “elected” was not yet used for their admission into the liberty, notwithstanding it occurs repeatedly with respect to the elections of the 24.

Made.

Elected.

In analogy to the amercements for non-attendance at the court leet, fines appear to have been imposed upon those who absented themselves from the common hall; than which a stronger proof cannot be adduced of the nature of the reciprocal duties and privileges which were connected with the character of burgess.

YARMOUTH.

In the records of this reign relative to Yarmouth, we find a repetition and continuation of the same system we have before pointed out. The leets are held as theretofore—the jurors are impannelled and sworn—amercements are imposed, some for non-attendance, others, according to the charters and bye-laws of London and the general statutes, for occupying open shops, not being burgesses. And as illustrative of the corresponding *obligation*, as well as *right* to be a burgess, some are presented by the jury as persons who *ought to be burgesses*, and *are not sworn*, and therefore they are in mercy.

1521.

Leets.

Again, in conformity with the statutes which we have

* Vide ante, pp. 152, 181—185, 196, 245.

Hen. VIII. quoted in this reign, some persons are presented as *strangers*
 Strangers *born* (alienigeni nati,) and occupy as freemen of the king's
 born.
 Liberi ho- realm (*liberi homines*,) against the customs of the town. And
 mines. some are presented as *foreigners*.

Similar entries occur in the other leets—the middle—north—and southern leets. And the entries of the sessions—of writs—and of the gaol-delivery follow.

HYTHE.

We have only a few extracts from Hythe, but they are important, as showing most distinctly the description of a
 Burgess. *burgess*.

The following entry is found in the brotherhood and guestling book of the 17th of Henry VIII.

1525. After proclamation made, the mayor, bailiff, or head officer, shall, by the assent and consent of his brethren, name so many as the said town be assigned to, of the most wisest and discreetest persons there present, and that every one of them be *a freeman, householder and indweller within the same town*: which persons then so named, shall be by the recorder of the same town registered in the town book.

Fol. 164 A. The same to be *sworn* "to elect, choose, and name one jurat of this town, which shall be *inhabitant*, and shall be one of the mayor or bailiff's brethren and associates, &c."

And yet, as a strong instance of the usurpations which were introduced into boroughs, and often sanctioned by Parliament, non-residents of all descriptions have been admitted into this borough, and have been confirmed by decisions of the House of Commons.

The different names under which the "*burgesses*," (in order to speak accurately and consistently with the real constitution of England,) were described, may be collected from the following extract.

1539. In an indenture between the then Archbishop of Canterbury, of the one part, and the "barons," "*good men*," and "*inhabitants*" of the town of Hythe, of the other part; the archbishop demises the bailiwick and office of bailiff of the town of Hythe, with certain lands and tenements, to *the said*

"barons," "good men," and "*inhabitants*," and their successors, for 99 years. Hen. VIII.
1539.

Hythe was not then incorporated—at least, if so, the *inhabitants* were at all events part of the corporation.

And that the barons of the Cinque Ports ought clearly to have been *inhabiting* within the port, is also clearly established by the following extract.

"Henry, &c.: To our beloved and trusty counsellor, George, Lord Rochford, constable of the castle of Dover and warden of the Cinque Ports, and to our well-beloved and trusty John Hales, one of the barons of the Exchequer, &c. greeting: Know ye, that we fully trusting in your fidelity and provident circumspection, have assigned you, and by the tenor of these presents do give to you, and to two of you, full power and authority to take and receive the *oaths and fealties* of all and singular our lieges and subjects whomsoever (as well spiritual as temporal) *inhabiting and residing within the town and port of Hythe* and the liberties, and members thereof, who are *of the liberty of the Cinque Ports*, of whatsoever degree, estate or condition they may be, according to the force, form and effect of a certain statute concerning our security, estate and succession, in this present Parliament made and provided, and according to the tenor of the oath to these presents annexed." 1524.

LYME.

In the 35th year of this reign, letters patent were granted to the borough of *Lyme*, reciting those of the 22nd Edward IV., and that the *burgesses and inhabitants* of the town of Lyme had intimated the same necessity as appeared in the recited charter; that the same danger of shipwreck would hang over and threaten, by the term of 65 years drawing to its end; and the king, considering the premises, and the relief and common good of the town and port, and that the *burgesses and inhabitants* of the town, and other his subjects, not less than theretofore, since the date of the recited letters patent, might willingly *remain and inhabit* within the town, and lend their helping hands towards the reparation or 1543.

Inhabitants.

Hen. VIII. building of the port—granted that the *burgesses* should have the town, with all the liberties and franchises, to the *burgesses* of the same in any manner belonging, during the term of 50 years, to begin immediately after the end of the former term, under the rent of five marks, and 13s. 4d. for tenths and fifteenths. Provided always, that the *burgesses* and *inhabitants* of the town, their heirs and successors, should, at their own proper costs and charges, well and sufficiently repair, maintain and sustain a certain pier there, called the Cob.

YORK.

1534. In a case pending in the 26th year of Henry VIII.,* it was alleged, that in the city of *York* there existed the following custom: "That no merchant stranger, who was not a citizen of the same city, and *residing* out of the liberty, at any time should buy or sell any merchandise within the liberties, to any merchant stranger who was not a citizen; upon pain of forfeiture of such merchandise to the mayor, sheriffs and citizens." And the issue taken was, that no such custom had existed from time immemorial. The reporter adds, "by which it seems that the custom was good." Tamen quære, because, by the charter of Richard II., the city was *incorporated* by the name of mayor, *sheriffs*, and citizens of the same city; and they were before named mayor, *bailiffs* and citizens; the custom therefore for such merchandise to be forfeited to the mayor, sheriffs, and citizens, must have arisen since the time of Richard II., and within the time of legal memory; consequently it cannot be a good custom—for the commencement ought to be time out of memory, and it is no custom if the time of commencement is known to be within time of memory.

Bendloe, with the carelessness or error so common in the reporters of that day, asserts that York was "incorporated" by the charter of Richard II. But the reader will have already seen, by the general documents which have

* W. Bendloe, 34.

been adduced, that this was highly improbable; and the Hen. VIII. charter itself* positively negatives the fact.

CHESTER.

That the admission into corporations was an actual admission into the place to which the person came, for the purpose of permanent residence, may be collected from the following entries of the 36th year of Henry VIII. respecting Residence 1544. Chester, which are to be found amongst the Harleian MSS.

And from the same documents it will be perceived, that the ancient doctrine of freedom by *birth* was continued in Birth. practice; and that the exercise of the privileges, when granted, was solely and exclusively confined to those who were *resident* in the place, as we have already seen in the Resident. instances of *Yarmouth* and *Hythe*, and other boroughs.

"Mem.—That George Parcivall, sadler, the son of Robert Admission Parcivall, cardmaker, was *admitted* to the liberties and franchises of the city,† to have and enjoy the liberties and franchises, according to the laws and customs of the city. And he gave no fine, because his father was free, and to the liberties and franchises was admitted before the nativity of the aforesaid George. Therefore he gave for a fine 10*½*d., according to the ancient custom in the city from ancient usage."

"R. B. Mercer, by Robert Barton, mayor of the city of *Chester*, was *admitted* to the liberties and franchises of the Admission city, to have and enjoy, &c., according to the custom of the city, &c. And gave for a fine 20*s.*, which in hand is paid according to the orders, under condition, &c.

"Proviso, that whensoever it should happen that the same R. B. should *remain or be resident without the franchises of the city*, that then this present admission be had for nothing." Non-resi-
dence.

"Mem.—That the aforesaid day and year, A. B. Barker, by the mayor, was admitted to the liberties and franchises of the city, to have and to use, &c., and gave as a fine 26*s.* 8*d.*; viz., in hand 6*s.* 8*d.*, and the residue agreed to pay

* Vide ante, p. 739.

† Harl. MSS. 2016, p. 31.

Hen. VIII. within the three next following years at the feast of St. Michael the Archangel; likewise for his sureties A. B. C. and D. With the same proviso as before."

IRELAND.

In the charters and documents of this reign, we have occasionally seen reference to the *inhabitants* of the different places, as electing the members of Parliament, and forming the body of the burgesses; as well as the persons incorporated under the several charters.

We find precisely the same course pursued in Ireland.

STATUTES.

1541. A statute of the 33rd of Henry VIII., describing the voters for counties, cities, and towns, enacts, that every knight, citizen, and burgess, for any Parliament thereafter within the realm of Ireland to be summoned, appointed, or holden, shall be chosen and elected by the greater number of the *inhabitants* of the counties, cities, and towns, being present at the election, by virtue of the king's writs for that intent addressed. And also that every elector of the knights shall dispend and have lands and tenements of estate of freehold within the said counties, at the least to the yearly value of 40s., over and above all charges.

Recited 10
Geo. IV.
c. 8.

CHARTERS.

There are also the following patents and charters of confirmation at the Rolls Chapel, granted to the following boroughs:

Kilkenny. 1509. *Kilkenny*, at this period, received an inspeximus charter, confirming those which had been granted by Henry V. and Richard II., Edward III., William Earl of Pembroke, and Isabelle his wife, in the 7th year of Henry III.*

Dublin. Henry VIII. granted to *Dublin* an inspeximus charter, confirming those of King John, Edward II., and Edward III.†

Cork. The charters of Edward I., Edward II., Edward III.,

* Rot. Conf. 1 Hen. VIII. p. 4, n. 6. † Rot. Conf. 1 Hen. VIII. p. 5, n. 6.

Richard II., Henry VII. to the city of Cork, are recited and confirmed in this same reign.* Hen. VIII.

Limerick also received an inspeximus charter, confirming the grants of Edward III., Henry IV., Henry V., and Henry VI.† Limerick.
1510.

The charters of John, Henry VI., Edward IV., and two of Henry VII. to the city of *Waterford*, were confirmed to the mayor, bailiffs, citizens, *inhabitants*, and commonalty of that city.‡

Drogheda at this period received a charter, reciting and confirming those which had been granted by Henry III., Edward I., Edward III., Richard II., Henry V., and Henry VI.§ Drogheda.
1512.

A confirmatory charter was likewise granted to *Dundalk*, reciting that of Edward IV., which contains by inspeximus the charters of Richard II., Henry V., and Henry VI.|| Dundalk.
1515.

From an inspection of the original rolls, we have no hesitation in stating, that not the slightest alteration was made by any of the charters in the nature or class of the burgesses: but that they continued the same as they had been from the earliest period of our history. And the provisions in these charters, in every respect, bear the strictest analogy to those we have already collected for England.¶

We next proceed to the charters of incorporation granted to Ireland in this reign. Charters
of Incor-
poration.

Kildare received a charter,** which commences with a recital, that, in consequence of the king's love and affection for Gerard Fitzgerald, Earl of Kildare, he had granted to the burgesses and commonalty of the town of Kildare, that they might surround their town with a ditch and walls of stone;—that it should be a *free borough*, with all the liberties and free customs to a borough belonging;—that they might be able to elect from themselves yearly one superior and two reeves to keep the borough and hold the pleas of the same, and

* Rot. Conf. 1 Hen. VIII. p. 5, n. 7. † Rot. Conf. 2 Hen. VIII. p. 8, n. 4.

‡ Rot. Conf. 2 Hen. VIII. p. 10, n. 11. § Rot. Conf. 4 Hen. VIII. p. 1, n. 5.

|| Rot. Conf. 7 Hen. VIII. p. 1, n. 13. ¶ Vide ante, p. 1119.

** Pat. 7 Hen. VIII. p. 3.

Hen. VIII. that they should take their oaths before the *burgesses* and
 1515. *commonalty*;—that the superior, reeves, burgesses, and com-
 Incorporate monalty should be one body *corporate* and politic, with per-
 Return of writs. petual succession, &c.;—that the superior and reeves should
 Drogheda. have the *return of all writs*, &c. to be executed within the
 Justices. borough;—that they should have cognizance of all actions,
 Non-intromit. real and personal, as fully as the mayor of the town of
 Drogheda. *Drogheda* had:—with infangthef and outfangthef;—and
 all issues, profits, and amercements;—that the superior and
 Justices. reeves should be justices of the peace within the borough,
 and the escheators and coroners;—that no other justices or
 Non-intromit. minister should intromit;—that the superior, reeves, bur-
 gesses, and commonalty should be released from toll;—
 that they should not plead or be impleaded elsewhere but
 within the borough. The charter then concludes by grant-
 ing to the superior, &c. all the customs, &c. which the bailiffs
 Dundalk. of the town of *Dundalk* had; with a special exemption and
 reservation of all the rents belonging to Gerald, Earl of
 Kildare.

The next charter upon the roll is one to the college of
 Maynooth Maynooth, giving them the most ample *corporate* privi-
 leges; but as it does not present any important feature to
 illustrate our inquiry, we shall abstain from any further
 observations upon it.

Athye. This king granted a charter of incorporation to *Athye*,*
 which commences by reciting, that for the security of the
 town of Athye, in the county of Kildare, he had granted to
 Inhabitants the *inhabitants*, that they might surround their town, &c.
 with ditches and walls of stone. That at Michaelmas yearly
 Reeve. they might select from themselves a *reeve*, to *keep and*
govern the same, and to hold the pleas, which to the town
 and *inhabitants* there belonged;—that he should take his
 Athye. oath before the *inhabitants*;—that the reeve and *inhabitants*
 Corporate. should be one body *corporate* and politic, with perpetual
 succession, &c.;—that the reeve and his successors should
 Return of writs. have the *return of all writs* within the town;—that no sheriff,
 Non-intromit. or other minister, should intromit;—that the reeve and his

* Pat. 7 Hen. VIII. p. 3.

successors should have jurisdiction over all pleas personal and mixed;—that the reeve and the *inhabitants* should have jurisdiction of infangthef and outfangthef within the town;—with all issues, rents and profits;—that the reeve and his successors should be *justices* of the peace; also, that the reeve should be the escheator and coroner—and that no other minister should intromit. Hen. VIII.
Justices.

The last charter that we can discover upon the Patent Rolls is one to *Galway*,* reciting two charters of Richard II. and Edward IV., and granting a few additional privileges, but none of incorporation. Galway.
1544.

WALES.

This principality, we have seen, was repeatedly the object of legislative interference in the course of this reign; the intention evidently being to assimilate it as much as possible to the institutions of England,

We have already pointed out the extent to which we believe that similarity to have originally existed; although it was subsequently much disfigured by abuse and modern usages. At all events, the provisions which were made respecting it, for the purpose of assimilating it to the institutions of England, were those which confined the enjoyment of all the privileges, and the performance of all the duties, to those who were *resident* within the districts to which the privileges related. And the voting for members to Parliament, and the consequent contribution to their wages, were all granted and imposed upon the *inhabitants*. Resident.
Inhabitants

Their *commotes* and *cantreds*—analogous to our *borough-motes* and *hundreds*, were partly continued—their *law-days* and *courts leet* were established and confirmed; and, generally speaking, their ancient customs preserved.

CONCLUSION.

We have now arrived at the termination of this reign—in all probability the most important in our history, with reference to our laws, constitution, and religion—marked

* Pat. 36 Hen. VIII., p. 9.

Hen. VIII.

as it is by the great changes which then occurred. The diffusion of printing had opened channels for knowledge and information; the first effects of which were to direct the public attention against the abuses in our ecclesiastical institutions. This gradually led the thoughts of men to the improvement of our law, and to the correction of those usurpations with which it was disfigured. Had the times, in other respects, been equally favourable for that purpose, nothing could have withstood the torrent of innovation, and the constitution might have been entirely remodelled. But the arbitrary conduct of the king in a great degree checked that course; and the Parliament in no degree aided it; for its invariable subserviency to the will of the king, and acquiescence under his violence, left him altogether in possession of the government, both executive and legislative.

Of the arbitrary nature of his conduct some striking instances occurred.* But in the midst of all his power, and the suspension as it were of the constitution of England, more really useful laws were passed in this reign than in any which had preceded—and it will ever maintain a conspicuous position, even in comparison with those subsequent periods in which the law received its greatest improvement—as may be proved, by the continuance to this day of some of the enactments then passed.

With respect also to the corporations, although the foundation was now generally laid for the usurpations which followed in the succeeding reigns—yet to the close of this dynasty, nothing essential was done to alter the nature of the boroughs or the burgesses.

* Early in this reign, the Parliament made some show of resistance to the impositions of the king. And Wolsey was told, when he desired to reason with those who refused to comply with the king's request, "That it was a rule of the House never to reason but amongst themselves." But Sir Thomas More, then the Speaker of the House of Commons, exerted himself to pacify this resistance; and the king stated to Montague, one of the members, laying his hand upon his head, "That if the bill which he desired was not passed by to-morrow, his head should be off." And Wolsey told the citizens of London, "That they had better desist, for it might fortune to cost some people their heads."

By these means the subserviency of the Parliament was partially secured, but the king took care that none should be summoned for two successive periods of seven years. Notwithstanding which, during this eventful period, there were no less than 10 parliaments and 33 sessions.

The ancient law still continued in force; and notwithstanding Lord Mansfield has erroneously stated, in the case of Somerset and Stewart,* that the last *confession* of villainage was in the 19th of Henry VI., still it is obvious, that villainage continued during this and the preceding reign of Henry VII.; and is the best proof of the continuance of the same doctrine as to the distinction of *villains* and *free-men*, which had existed from the earliest times. Hen. VIII.

The sheriffs' *tourns* and the *courts leet*, at which those doctrines were practised, and also the ancient system of *pledges*, *swearing the allegiance*, and *enrolling* those who were sworn, were practised in their full force; and all privileges and burdens were expressly confined to the *inhabitants* Inhabitants and *resiants* within their respective districts. Great have been the mischiefs, which have since arisen in consequence of departing from this ancient, simple, and practical course. But we may close this reign, as we have done the former, with the positive assertion—that the burgesses continued in all the boroughs to be the same as they ever had been—viz. the *free inhabitant householders paying scot and lot, sworn* and giving their *pledges* at the *court leet* to the king, and *enrolled* according to the ancient usages and customs of the country.

EDWARD VI.

This reign, short in its duration, is also unimportant in its results: at least as far as relates to the subject of our inquiry. And as the incorporations were at this time fully established, that point will require no further illustration. The municipal usurpations, the progress of which we have now to trace, did not assume so decisive a character at this time as to require particular remark. It will, therefore, only be necessary shortly to note a few of the statutes and charters

* Loft's Rep. p. 1.

Edw. VI. which occur in this brief reign; and one or two documents to confirm the doctrine we have already asserted, will complete our collection for this period.

STATUTES.

1547.
Cap. 3.

The third chapter of the first year of this reign provides, in analogy with our early laws, for the punishment of vagabonds, and for the relief of poor and impotent persons; and the same occurs in the 16th chapter of the third and fourth years; and also in the second chapter of the fifth and sixth years of this reign.

Cap. 8.

The eighth chapter relates to the confirmation of letters patent: and recites that the king, since the 28th of January, had granted by several letters patent, as well to bodies politic and *corporate* as to sundry other of his loving subjects, divers franchises, privileges, liberties, &c.: in avoiding which, many ambiguities, doubts, and questions have, and might hereafter happen, as well for mis-naming, mis-recital, or non-recital of the objects of the grant—or for lack of inquisition, finding the king's title before the making of the letters patent, and similar grounds—and reciting all their grants—a general confirmation is given of these letters patent, notwithstanding these recited defects; and it is repeated in the eighth chapter of the fifth year of this reign.

Cap. 10.

The tenth chapter relates to the principality of Wales, and the county palatine of Chester; and the persons that submitted to its provisions are described as *dwelling* therein.

Dwelling.

Cap. 14.

The 14th chapter, relative to chantries collegiate, recites the 37th of Henry VIII., chap. 4, and gives all lands assigned for finding priests to the king—and also all money given for such purposes by any *corporations*, guilds, fraternities, companies, or fellowships of mysteries or crafts, together with all their lands, tenements, as well as the fraternities and guilds, with the exception of the corporations above-mentioned.

Corporations.

But the 21st section saves to all persons, bodies politic and *corporate*, not intended to be affected by that act, their rights—and the 34th section provides that the act shall not

be prejudicial to the general *corporation* of any borough, city, or town. Which seems clearly to establish the distinction we have before pointed out, between the corporations of guilds, crafts, fraternities, and other companies—and the general corporation of the burgesses and officers of the place, who were employed in its municipal government. Edw. VI.
General
corporations.

The third chapter of the second and third of Edward VI., contains provisions with reference to purveyance for the king's household and his sisters. 1548.
Cap. 3.

And the fifth chapter relates to the fee-farms, payable by cities, boroughs, and towns *corporate*, or by the bodies corporate or politic, officers or ministers of the same, which it is directed shall cease for three years, and not be paid to the king, but be bestowed about repairing of walls, bridges, setting the poor to work, or other good deeds in such cities, &c.; which was afterwards extended for three years. Cap. 5.
Corporate.

The 25th chapter is a bill for keeping county courts, which it recites had been usually kept from month to month; and in some, though not many counties, from six weeks to six weeks, whereby certain errors have arisen respecting the returns of the process, causing to the plaintiffs double *cost and charge*, to the great ignominy and slander of the law, and therefore it was directed that the courts for the future should be kept monthly. Cap. 25.

In the second chapter of the third and fourth of Edward VI., provisions are made respecting woollen cloths, in which a distinction is drawn between towns, villages, and hamlets, being not corporate—and cities, boroughs, and towns *corporate*; the head officers of which are also mentioned. 1549.
Cap. 2.

The 15th chapter of the second and third of Edward VI., having amongst other things provided, that no one should interrupt any mason, carpenter, &c., born within this realm, or made denizen herein, working in any craft within any borough, city, or town *corporate*, with any person who would retain him, although such person should not *inhabit or dwell* in such place, nor be *free* of the same. Cap. 15.

The 20th chapter of the third and fourth of Edward VI. recites, that in the city of London, being the king's chamber Cap. 20.

Edw. VI. and most ancient city of this realm, the artificers and craftsmen of the trades, arts, and mysteries, were at great costs and charges, as well in bearing and paying of taxes, talliages, and subsidies, *scot and lot*, and other charges; and that if *foreigners* should come and work among them within the liberties of the city, contrary to their ancient privileges, the same would be a great decay of cunning, and an impoverishment and drawing away of the *freemen*, to the great hurt of the city; for reformation thereof it was enacted that the former act should be repealed.

Scot and
Lot.
Foreigners

It is obvious from this statute, that the experiment of allowing persons to be employed in places where they did not permanently reside had been found not to answer, and was therefore prevented, after experience of the inconveniences resulting from it; and it also appears that the *freemen* are here treated as *dwelling* in the place; and, as in many of the ancient records, are contradistinguished from *foreigners*.

Freemen.
Dwelling.

^{1552.}
Cap. 6. In the sixth chapter of the fifth and sixth of Edward VI., relative to the true making of woollen cloths, the mayor, bailiff, *portreeve*, or other head officer of cities, boroughs, towns corporate, and port towns are mentioned, as well as the mayor and *commonalty*, or bailiffs and commonalty, or other corporation of the township, *by whatever name or names they shall be incorporated*.

Portreeve.

It will be observed that these terms are used with reference to municipal jurisdiction.

Cap. 14. On the other hand, in the 14th chapter of the same year, in an act relative to trade, against regraters, forestallers, and engrossers, the terms used are—city, port, haven, market, fair, &c.: excepting in those clauses of that act which relate to local jurisdiction, where the terms, city, borough, and town corporate are again adopted—thus establishing, even at this late period, the same distinction between the provisions, as to trade and municipal government, which we originally noted in the early charters with respect to the guilds and boroughs. Cap. 21. The 21st chapter prohibits tinkers and pedlars from wandering from the towns where they *dwelt*, or exercising their trade unless licensed.

The fifth chapter of the seventh of Edward VI., relative to the excessive prices of wine, besides the jurisdiction given to the head officers of cities, boroughs, and towns corporate—the *steward* in his *leet*, and the *sheriff* in his *tourn*, have the power of inquiry and presentment by 12 lawful men expressly given to them :—which recognition of the continuance of their jurisdiction, will close our extracts from the statutes of this æra.

We proceed to mention the few charters that occur during the same period.

LONDON.

Nothing material occurs in this reign with respect to London, excepting the charter we shall extract, granting certain possessions in Southwark to the city. In the first year, there is a grant* to the *master* and *brethren* of the Salters Company, of certain lands, to find a priest to sing within the church of Allhallows.

Similar grants are made to 32 other companies, but which did not include all those then existing, but only those which had grants made to them. And although not immediately connected with London, it may be worth while to mention, as showing that the doctrine of *villainage* was still in practice, and *court leets* still in existence, that Edward VI. granted, in the fourth year of his reign, to Lord Wentworth,† the lordships and manors of *Stebunhuth*, otherwise Stebenhythe and Hackney, &c., part of the possessions of the Bishop of London. After the usual general words, are added, “all courts, *leets*, profits and perquisites of courts and leets, view of *frankpledge*, and all things which to view of frankpledge appertain, or hereafter may or ought to belong; bondmen, bondwomen, and *villains*, with their sequels, knights’ fees, wards, marriages, escheats, reliefs, heriots, goods and chattels waived, goods and chattels of felons and fugitives, persons outlawed, and put in exigent, deodands, profits, liberties, emoluments, and hereditaments whatsoever, with every of their appurtenances, as well spiritual as tem-

* Mad. Fir. Bur. 31.

† Pat. p. 8.

Edw. VI.

1553.
Cap. 5.Leet.
Tourn.

1547.

Compa-
nies.

villainage.

Leet.

1551.

Leets.

Frank-
pledge.

Villains.

Edw. VI. poral, of whatsoever kind, nature, or sort they may be,
 1551. by whatsoever names they are known, esteemed, or named, situate, lying, being, commencing, giving, or receiving, in the towns, fields, parishes or hamlets aforesaid, or any of them, or elsewhere wheresoever within the kingdom of England, to the said manors, and other the premises, or to any of them in anywise belonging or appertaining, or as member, part, or parcel of the same manors, or of either of them."

And afterwards, in the same grant, is contained a special
 Leet. power to hold, within the same manors, similar courts *leet*, views of *frankpledge*, and all things which to view of frankpledge appertain, or hereafter may or can appertain or belong, assise and assay of bread, wine, and all chattels waived, estrayed goods and chattels of felons, fugitives, outlaws, and persons put in exigent or otherwise, in whatsoever manner condemned or convicted, felons of themselves, deodands, fairs, marts, markets, liberties, franchises, and jurisdictions whatsoever.

In the same year also, a charter was granted to the mayor and commonalty, and citizens of London, giving certain lands, premises, and rent-charges, late the property of the Duke of Suffolk, in Southwark,* Lambeth, Newington, and other places in the county of Surrey, (excepting the mansion called Southwark Palace, and the gardens belonging to the same, and the park of Southwark, and all the buildings called the Antelope, and the King's Bench, and the Marshalsea,) together with the lordship and manor of Southwark, lately pertaining to the monastery of Bermondsey; with the
 South-
 wark.
 Court
 Leet. *court leet*, view of *frankpledge*, chattels of felons, fugitives and outlaws, waifs, estrays, &c.; and all escheats; and all
 Borough. the manor and borough of Southwark, late parcel of the possessions of the Archbishop of Canterbury; and amongst other rents, one arising out of a messuage belonging to the Fishmongers' Company; and out of other tenements, late

* Southwark, like London itself and all other boroughs, was held in free burgage, as appears by a grant of Henry VIII., of some houses in Southwark. See Cro. Eliz. 120, where it is said also, that land out of the borough could not be held in free burgage; and see Meor, 257; and Lit. sec. 162, 163.

or now of the master of the Bridge-house. The charter also Edw. VI. 1551.
 gave the assise of bread and beer, and all that belonged to the office of clerk of the market, and a fair, market, and court of pie poudre; and that the *inhabitants* of the town, Inhabitants
 borough, parishes and precincts mentioned in the charter might be impleaded in the city; that the mayor, commonalty and citizens might have cognizance of all pleas, &c.; and that the issues should be tried by the *men* of the Men of the borough.
 borough or town; that the mayor, commonalty, and citizens might choose two coroners, and that no other coroners of the Coroners.
 king should intromit; and that the mayor should be the Intromit.
 escheator, with a similar clause; and also clerk of the market; and that no sheriff, or any other officer or minister of the king, should in any way intermeddle in the town, borough, parish or precincts; and that all persons from time to time *inhabiting* or *resident* within the town, borough, Inhabiting.
 parishes or places, should be under the government of the mayor and officers of the city of London, as the citizens and *inhabitants* of the city of London are. That the mayor, recorder, and the aldermen, who had borne the charges of the city, should be justices of the peace. The ancient fee-farm of the town of Southwark, of 10*l.*, is also mentioned.

It will be observed, that in this charter the borough of Southwark is mentioned as then existing, and as being the property of the Archbishop of Canterbury; and it appears from the parliamentary writs, that it returned from the earliest period of any parliamentary election.

Parishes which were not mentioned in any early secular Parishes.
 documents, occur repeatedly in this charter, as they do likewise in the charter of Maidstone in the same reign. The *inhabitants* also, it appears, were the principal objects Inhabitants
 of the charter; as well for the purposes of government as of privilege:—and the general term which we have so frequently noted before, of “men of the borough,” occurs Men of the borough.
 frequently in this document, and the juries are directed to be taken from them: therefore it is clear, that the *non-residence* of the persons impannelled on the jury would have been a good ground of challenge; and, if so, it is equally

Edw. VI. clear, that it would have been a ground of objection to any
 1551. person claiming privileges under this charter as a *man* of the borough, that he was *non-resident*; an observation which will be material to be borne in mind in those cases, of which

Inhabitants there are many, where the *inhabitants* are, to the present day, exempted from juries under similar terms, although they are not permitted to participate in the other privileges of the borough; and the clause which subjects the persons *inhabiting* and residing within the town, borough, parishes, and places mentioned in the charter, to the jurisdiction of the mayor and his officers, clearly shows, both that the persons submitted to that jurisdiction were to be *residents*, as well as that the citizens and *inhabitants* of the city of London were assumed to be the same.

The general result of this charter was, to give the city a jurisdiction both civil and criminal, over the borough of
 Leet. Southwark, where it was enabled to appoint *leet* officers, who have, to the present time, exercised their functions
 Steward. there; the *high steward* presiding both at the court leet and borough court.

BRISTOL.

1547. This king also, in the first year of his reign, confirmed the charters of Henry VIII. to the mayor, burgesses, and commonalty of *Bristol*, and their successors.

1553. And it may not be beside our inquiry to note, that upon the summoning of a Parliament, in the seventh year of his reign, a special writ was directed to the citizens of Bristol to elect and return two citizens to serve in that Parliament, and the sheriffs returned two persons to serve, both as *knights* and *citizens* for the *county* and *city* of Bristol.

LITCHFIELD.

As an instance of the form and nature of the charters which were granted in this reign, we shall insert that of the
 1547. city of Litchfield, in the first of Edward VI., by which the king recited, that for the love he bore towards his beloved and faithful subjects, the men, *inhabitants* and *resiants* in

the city of Litchfield, in the county of Stafford, and towards Edw. VI.
 that city, desiring that tranquillity might be from time 1547.
 to time increased in it, and he granted to them, that
 Litchfield, from thenceforth, should be a city, *incorporated*
 of two bailiffs, and the citizens within the city, for ever.
 And that the bailiffs and citizens within the same city,
 should and might be one body *incorporated*, and one city, Incorporated.
 perpetual in deed and in name, and should have perpetual
 succession. And be capable in the law to purchase, re- Perpetual
 ceive, give and grant lands, tenements, &c. as fully as other succession.
 bodies politic. Capable.

That two persons should from thenceforth be elected
 from amongst the citizens *inhabiting* within the city, in Two
 every year, to be the bailiffs of the city for one whole year. Bailiffs.
 And that 24 persons should be elected by the bailiffs and 24
 burgesses, or the major part of them, from amongst the Burgesses.
 citizens *inhabiting* within the city, over and above the
 two bailiffs, to be burgesses of the city, from time to time,
 as necessity should require, for the rule of the city. And
 if it should happen that any of the bailiffs or burgesses die,
 or for any reasonable cause, *by the mandate of the king*, or
 by the bailiffs and burgesses, or the major part of them,
 should be removed or discharged from their offices, then it
 was ordained, that another bailiff or burgess, in the place
 of the bailiff or burgess so dying or being removed, should
 be elected, made, and appointed by the bailiffs and burgesses,
 or the major part of them, to perform and exercise the
 office so vacant.

Two persons were by the charter then named as modern Two
 bailiffs.

And twenty-four persons, described as citizens of the city, Twenty-
 were named to be jointly and severally the 24 burgesses four.
 during life, so that they should well behave themselves in
 that office.

That the body should be called by the name of "the Name.
 bailiffs and citizens of the city of Litchfield," and by that
 name might plead and be impleaded.

And that they should have a common seal. Seal.

Edw. VI. That the bailiffs should have and hold by themselves, or
 1547. one of them, and their *steward*, weekly, on Thursday,
 Court. within the city, one court, which should be a court of record:—and should have authority to hold pleas, concerning all actions, suits or complaints, as well real and personal as mixed, for any matter arising within the same city, &c., with
 Coventry. the like judgments as in the city of Coventry.

That the bailiffs and citizens, and their successors, *for the improvement of the city and the relief of their burdens*, should
 Fines. have all manner of fines and amercements of the court at fee-farm, rendering 20s. a year at the Exchequer, by the hands of the sheriff of the county of Stafford.

That they should be able to receive and hold, to them and their successors for ever, lands and tenements of the yearly value of 20l.—so that they be not held of the king in capite, nor by knight's service; the statute against putting
 Mortmain. lands or tenements in mortmain, or any other statute or act heretofore made or published to the contrary thereof notwithstanding.

That *for the improvement of the city, and the common weal of the same, and to the end that the bailiffs and citizens might attend more quietly to their affairs*, they, their heirs, and successors, as long as they should be *abiding* in the city or the suburbs thereof, should not be put with *foreign* men in any
 Abiding. assises, juries, or inquisitions, which, by reason of the tenements or trespasses, or other foreign business to be transacted, happening out of the city, before whatsoever justices or other of the king's ministers, should have arisen, except
 Not on foreign juries. the suit of courts and *leets* of the lords of them, or any of them, of whom they, or any of them, hold their lands or tenements, or at whose *leets* they, or any of them, owe suit, by reason of their *residence*.

And that *foreign* men should not be put with them, the
 Foreigners. *inhabitants*, in any assises, juries, or inquisitions, to be taken
 Inhabitants. by reason of lands or tenements being in the city or the suburbs thereof, or of trespasses, contracts, or other internal business whatsoever, which should have arisen in the same city, or the suburbs thereof; nor should they sustain any

amerciament, fine, issue, or other loss thereby, for misappearance with *foreigners* or in *foreign courts*, about such suits, actions, or prosecutions; but those assises, juries, and inquisitions, concerning those things which should be arising in the city, or the suburbs thereof, should be done by the men of and in the same city, or the suburbs thereof, only: unless those things touch the king, or his ministers, or the *commonalty* of the city, or any other reasonable cause should intervene wherefore it ought to be done otherwise.

Edw. VI.

1547.

That the bailiffs, and their successors for the time being, during the pleasure of the king and his heirs, should be the *justices* to keep the peace within the city; and should execute every thing concerning whatsoever offences and other matters, happening within the liberty of the city, as any justices of the peace in any county in England might lawfully do, by the statutes and laws of the kingdom of England.

Justices.

And to the end that the limits of the city, and the suburbs and precincts thereof, might be better and more truly known, they might, from time to time, on the 1st day of May, yearly, make a perambulation, by *the view of the sheriff of the county of Stafford* for the time being, or his undersheriff, as necessity should require. And that the limits of the same city and the suburbs thereof, should be as ample, as in times past they were reputed and known to extend themselves, &c.

Perambulation.

Sheriff of the county.

It will be remembered, that Litchfield* is not mentioned as a borough in Domesday, nor have we any document relative to it till this time: at least as far as regards its municipal privileges. It would seem, therefore, that this was the first charter which gave it municipal rights and an exclusive jurisdiction—particularly as no charter is recited, or contained by *inspeximus*, in this of Edward VI.

Domesday.

Jurisdiction.

* Litchfield originally belonged to the church, and therefore was no doubt under ecclesiastical jurisdiction. It was a considerable place, before and during the Saxon Heptarchy; and the only bishop's see in Mercia. It had a bishop in 658, and was for a time an archbishoprick—but when the see was transferred by William the Conqueror to Chester, Litchfield dwindled into comparative insignificance, which may account for the absence of all documents relative to its municipal rights, within the periods material to our inquiry.

Edw. VI. We have before observed upon the unfounded assumption
 1547. that this was an ancient borough,* as the ground for the
 burgage tenure right being adopted in it. From this charter
 it will appear also, that there is less reason for applying that
 right to Litchfield than almost any other place.

The subsequent charter of Queen Mary, making Litch-
 County of field a *county of itself*, seems to have been granted, like
 itself. other charters of the same description, for the purpose of
 exempting the city from the interference of the sheriff of
 the county, with respect to the ordinary purposes of his
 office, and amongst others, for the collection of the fee-farm:
 and probably also with a view of excluding him from inter-
 fering at the perambulation, which the former charter recog-
 nized his power of doing.

It might at first sight be thought, that the terms, "men,
 inhabitants, and resiants," imported different classes of per-
 sons; but if they are considered, with reference to the lan-
 guage we have seen used in ancient charters, and the tau-
 tologous habit of composition of the period in which this
 charter was granted—of which it appears to be a fair speci-
 men—such a construction of these words will be readily
 abandoned. The ancient charters, as has been shown, were
 ordinarily granted to "the men of the place;" which in the
 early periods of our history could not have produced any
 ambiguity. But when population increased—when the boun-
 daries of the boroughs became partly intermixed with the
 surrounding suburbs—and the facilities of moving from town
 to town began to raise questions, as to the place of birth or
 residence of individuals—it was necessary to make to so
 general a term as "homines" some addition, which should
 expressly connect them with habitation; the qualifying ex-
 pression therefore of "inhabitanter," is here subjoined to
 "homines," which would include every inhabitant house-
 holder in the place, contributing to its burdens, by paying
 scot and bearing lot; for whose benefit the charter was in-
 tended. The word "resiants," is no more than the peculiar
 appropriate expression for the suitors at the court leet—in-
 Lect.

Inhabi-
 tants.

Resiants.

* Vide ante, p. 258.

cluding, in fact, the same class of persons ; who, after they had been duly sworn and enrolled at that court, were, strictly speaking, the burgesses of the place. Edw. VI.
1547.

The passage in Lord Coke, already quoted,* stating that "all cities were anciently boroughs," is strongly confirmed by this charter, in which the term "burgess" is used, as convertible with "citizen."† Burgesses.
Citizens.

And so generally is the term "burgess" applied, that there are some cities in which the term citizen has never been used in the charters. Thus the charters to Bristol, even to the reign of Queen Anne, are grants to "the mayor, burgesses, and commonalty."

It is too obvious, that "the men of the city" must be synonymous with citizens, to require a word of further explanation. Men of the
city.

The expression, "citizens *inhabiting* within the city," has been taken as raising an inference, that there might be citizens who were not inhabiting there. But as the charter is expressly granted to the "inhabitants" and "resiants," it seems too strained a construction, to draw from this expression, a deduction so much at variance with the intention of the charter: particularly as they are capable of the same explanation which has been given above to the former terms: and with reference to the general object of the grant, it would appear to be much more consistent with its other provisions, to construe the words as implying that inhabitation was necessary for every citizen, before he was entitled to enjoy any of the privileges of the city, or execute any functions within it. Inhabiting

The term "burgess," which is introduced into this charter, from the particular manner in which it is used, as applied to the 24, might, by a strict literal construction, be made to introduce some confusion; but taken, as we have suggested before, with reference to the general intent of the charter, it seems capable of this plain construction—that it is used as synonymous with "citizens;" and that, therefore, the clause for the election of the 24, gives to the whole Burgess.

* See also the West Looe Case, pref. p. 8.

† See before, p. 48.

Edw. VI. body of citizens power to elect 24 out of themselves, who are
 1547. to be the burgesses for the rule of the city: not that they alone are to be the burgesses of the city—but that they are to be the 24 burgesses selected for its government.

It is no slight proof of the extensive power of the crown at Removal. this period, that the bailiffs and the 24 burgesses are assumed in the charter to be removable at the mandate of the king—stronger measures than would now be considered constitutional. For we have already seen, that a clause to that effect, in a charter, has been decided to be illegal; and it may be doubted, whether at law an appointment to such an office, under a charter which contains these or similar words, would not be treated as an appointment *quâmdiu se bene gesserit*.*

The clause relative to the Statute of Mortmain, seems also, strictly speaking, to be founded upon the dispensing power then claimed by the crown, and acquiesced in by the people; although, after the Revolution, when the principles of our constitution were canvassed and better understood, that power was justly disputed.

Abiding. The express limitation of the exemption from foreign juries, to those only who should be "*abiding*" in the city, is another decisive passage to show the intention of the crown to grant the privileges of the charter solely to the "*inhabitants*" and *resiants*:—the term *abiding*, being in fact, a translation of the Latin term, "*manentes*," used in the charters from the earliest time to denote inhabitancy. It may doubtless be said, that even this passage raises an inference that there might be citizens who were not abiding within the city. But were such a construction adopted, hypercritical as it is, still it would not militate against the general necessity of residence; because, a citizen might absent himself for a short time from the city, for some necessary and temporary purpose, keeping nevertheless his domicile within the city, and intending to return there, who would still continue a citizen, and be entitled to some, though not to all, of the privileges. So that the words may be explained even by

* 2 Sid. 49; Rolle's Ab. 456, p. 4; 3 Dyer, 333, in notis; 1 Vent. 82; 1 Sid. 462.

this construction, without justifying the general doctrine of ^{Edw. VI.} non-residence. This partial and temporary absence from a ^{Absence.} place where the person was enrolled as a resiant, was admitted by the common law, without the party being obliged to give pledges in the new place to which he went; unless he actually removed his domicile from the one place to another, or remained in the new place of his residence a year and a day.

With respect to that part of this clause which refers to the suit due from the citizens to the lords under whom they hold, strictly speaking, the holding of another lord in a different place, though it made the individual subject to his jurisdiction at his court-baron; and for the purposes of homage, fealty, and service; did not make him subject to the leet there:—that suit he owed only where he resided. This is ^{Leet.} imported by the latter part of this clause. But if that is the law, it will be said, this part of the clause shows that the residence of the citizens might be within the leet of the lord of whom they held; and it will therefore be inferred that they might reside out of the city. It must be admitted, that this passage appears to create some difficulty in that respect. But still, probably, not sufficient to induce the considerate reader to adopt the inference of non-residence, so inconsistent with the general nature of this, and all other grants. The passage may perhaps be explained, by supposing that the leet here referred to, was the leet of some lord within the city; a supposition strengthened by the fact, that this exemption is not to be met with in other charters, and therefore, is probably to be accounted for, by the peculiar circumstances of this particular place.

As *Coventry* is repeatedly referred to in this charter to ^{Coventry.} Litchfield, it may be material to observe, that that city had before this time an extensive jurisdiction, which was in the 6th year of this reign confirmed by a charter of Edward VI., ^{1552.} which contained a non-intromittant clause, as to all other officers and ministers of the crown.

Edw. VI.

NEWCASTLE-UPON-TYNE.

1547. A charter of the first year of this reign to the merchant adventurers of *Newcastle-upon-Tyne*, gives them the power of admission in distinct terms ; and grants to those of that body, *inhabiting* within the town, that they might be a society and body corporate ; and appointing also a governor, 12 assistants, and two guardians, all of whom are described as *inhabiting* within the town ;—which expression is repeated throughout the whole charter, with reference to the fraternity.

Admission.
Merchant
adventurers.

The annual election of the governor and guardians is also provided for, as well as the election of those officers, and the assistants, on any vacancies.

Admission. Afterwards the power to which we have referred, is given to the governor, the assistants, and the society, who are present, or the major part of them, to admit, make, and ordain, into their society, whomsoever, and as many as they think fit of the king's subjects, *inhabiting* or to *inhabit* within the town, for their lives ; unless for reasonable cause they are removed.

Other officers are provided ; and the usual corporate powers, and particularly that of making bye-laws, are also given.

But it appears a singular circumstance connected with this charter, that although it is an express grant of incorporation, in other respects resembling the usual charters of this description, it does not contain the customary clause giving

Name. a corporate name.

However as the body is undoubtedly created a corporation, and the having a corporate name is essential to it, although none is expressly given, such a grant must be implied.

As the charter in the commencement of the recital, speaks of the body, as called “ the merchant adventurers, inhabiting “ within the town and the county of the town of New- “ castle ”—this being the name they had before the incorporation, and here so distinctly referred to, may be assumed

to be that, by which the crown intended the new corporation should be called. Edw. VI.

The town of *Gateshead* was, in the seventh year of this reign, by an act of Parliament, severed from the bishoprick of Durham, and annexed to Newcastle-upon-Tyne. But it was provided, that the *inhabitants* should continue their common in that bishoprick, and have wood in Gateshead park for their reparations. And that the bishop's liberties should continue in Newcastle.* Gateshead
1553.

Inhabitants

This act speaks in express terms of the corporation and body politic of the town of Newcastle, and the *jurisdiction* which they have over the *inhabitants*.

STAFFORD.

We have already seen in our extracts from Domesday,† that *Stafford* was undoubtedly a borough long before the time of legal memory, and therefore, may properly claim to be a *borough* by prescription. But it was not *incorporated* till this reign, when in the third year, it received a charter giving it that additional privilege, which it is unnecessary to state at greater length. 1549.
Incorporated.

In this reign also there is a record of an arrangement made under the common seal, between the twenty-fifty‡ and the burgesses, in consequence of the twenty-fifty having usurped some privileges and functions, in which the burgesses claimed to participate: one of which was, that some of the burgesses should be upon the inquiry at the great sessions or *leet*; and that a burgess should be one of the chamberlains. Regulations were also made as to *foreigners* buying and selling within the town: the inhabitants and commoners being likewise mentioned in the document. Leet.

This king also, in the fourth year of his reign, granted a charter to this borough,§ which after reciting that the burgesses and their successors had *anciently been incorporated*, in order to prevent any future ambiguity respecting it, granted 1550.

* This statute was repealed, by the first of Mary, sess. 3, chap. 3.

† Vide ante, p. 255.

‡ Twenty-fifty, the body consisting of 25—see before, p. 1055.

§ Rot. Pat. p. 9.

Edw. VI. that the burgesses and their successors, by the name of
 1550. "Burgesses of the town of Stafford, in the county of
 "Stafford," should be *incorporate*, and one body *corporate*,
 in name and deed—and giving the usual corporate powers.
 The charter afterwards proceeds, at considerable length, to
 grant lands to the burgesses; but it does not make any allu-
 sion to the selection of the municipal officers.

It is certain that Stafford was a borough by prescription,
 as we have seen it mentioned as a borough in Domesday.*
 It is also clear, that it was not incorporated in the reign of
 King John,† for a charter of immunities is then granted to
 the burgesses and their *heirs*. And the ordinances, in the
 reign of Richard II.‡ and Henry VII.§ support the inference,
 that Stafford was not then incorporated:—which is also
 much strengthened by the fact, that a charter of confirmation
 appears upon the Patent Rolls, in the second year of this
 king's reign, which recites the charters of Henry VIII. and
 the other preceding kings, but in none of them are there any
 words of incorporation: they only repeating and confirming
 the exemptions from suits of shires and hundreds, and the
 other usual provisions of the early charters.

The above charter of Edward VI., therefore, clearly ap-
 pears to be the first charter of incorporation: and upon
 what pretence the king could recite that Stafford had been
 anciently incorporated, it is impossible to conjecture. Even
 stronger terms than these, equally unfounded in fact, will be
 seen in the subsequent charters of Queen Elizabeth, upon
 which we shall have occasion further to remark.

MAIDSTONE.

1548. A charter was also granted by Edward VI., in the third
 year of his reign, to *Maidstone*,|| which commences with a
 recital, that for many years past the government of the town
 was thought to pertain to certain *inhabitants*, commonly called
 the "Portreeve and brethren of the town of Maidstone," but
 that the principles of such government being found insuffi-

* Ante, p. 255.

† Ante, p. 408.

‡ Ante, p. 751.

§ Ante, p. 1064.

|| Pat. 3 Edward VI. p. 1.

cient in law, the king was desirous to *incorporate* and erect into a body politic the *inhabitants* of the town for their common advantage.

Edw. VI.

1548.

Corporate.
Inhabitants

The king then creates one Thomas Hiley, described as an honest *man* and an *inhabitant*, to be mayor—who with 12 other *inhabitants* are to be jurats for their lives, if it should seem good to the mayor, jurats, and commonalty.

Mayor.

Jurats.

The charter further directs that the *inhabitants* should be incorporated and created a body politic, by the name of the “mayor, jurats, and commonalty of the town of Maidstone, “in the county of Kent.” That the jurats should yearly assemble and nominate two men there, being jurats, to the other persons, *inhabitants* in the town and parish, having lands and tenements of freeholds in the same town and parish in their own proper right, for term of their life at least, so that they might elect one of the two jurats to be mayor, and that the mayor, when elected, should take his oath in the same form as the mayor of *Canterbury*. That in case of the death or removal of any jurat, the mayor and remaining jurats might elect another person, then *inhabiting* within the town, to be a jurat, for the term of his life; and that if any one of the jurats should commit any notorious offence, &c. then the mayor and the other jurats and commonalty might expel him.

Annual
election

of Mayor.

Canterbury

Vacancies

Removal.

The usual corporate powers are also given to the mayor, jurats, and commonalty, of purchasing lands: that they should have view of *frankpledge* of all and singular the *inhabitants* and *residents* within the town and parish of Maidstone, to be held before the mayor twice in every year; that they should have assise of bread: and jurisdiction in real and personal actions as is used in the city of *Canterbury*. That they should have all fines—a weekly market—four yearly fairs—and a court of pie powder.

Frank-
pledge.

Canterbury

Certain lands and tenements are also granted, and that the mayor should be clerk of the market.

That the mayor, jurats, and their successors, and the greater part of the persons *dwelling* in the same town, hav-

Dwelling.

Edw. VI. ing lands or tenements of freehold as aforesaid, might
 1548. have power and authority to make laws, statutes, and ordi-
 Bye-laws. nances for the common utility and wholesome government of
 the persons being in the town, and to change the same when
 to them it should seem necessary, in as ample a manner as
 Canterbury the mayor, aldermen, and commonalty of the city of *Canter-*
bury might lawfully do, &c. &c.

Upon this charter it should be observed, that the first
 officers who are appointed are all described as "*inhabitants*,"
 and that they are all expressly incorporated, under the
 name of "*commonalty*;" and as nothing has since occurred
 materially to change the nature of that incorporation, the
Inhabitants *inhabitants* must be considered as the persons really form-
 ing the corporate body. As no means are pointed out by
 the charter of selecting any portion of the *inhabitants* from
 the rest as *burgesses*, it is clear that there could not be any
 right of *selecting* any portion; but the king by his grant left
 it to the common law to define who of the *inhabitants* should
 enjoy the privileges, which it readily does, by ascertaining
Leet. in the court *leet* who are the *free resiants*, as *householders*
 paying *scot* and bearing *lot*, and consequently entitled to be
enrolled and *sworn*.

The annual election of mayor, as well as the elections on
 vacancies, are all to be made by the *inhabitants*; and the
 persons who are declared to be eligible are likewise de-
 scribed by that term.

Upon this charter it should also be further observed, that
 it expressly grants a view of *frankpledge*; and that a court
Frank- of *leet* and view of *frankpledge* is still held in the borough,
pledge. at which the *list of the householders*, according to the clear
 law of the leet, which we have so fully explained, is called
 over; and the *householders* ought, as *resiants*, undoubtedly
 to be *enrolled* and *sworn* there; although the Court of
 King's Bench, in the recent case of *Rex v. Mayor and*
Corporation of Maidstone,* held, that the law in this re-
 spect had become obsolete; and therefore refused a man-

* 6 Dowling and Ry. 354.

damus to administer the oath to certain householders who ^{Edw. VI.} had attended the court and tendered themselves to be sworn and enrolled.

It is a clear principle of law, that no part of it which is for the public good can become obsolete by disuse. And as we ^{Obsolete.} have shown how important a branch of it this practice of the court leet was ever esteemed, having been repeatedly the direct object of legal provision, from the earliest period of the Saxon laws, through all the succeeding reigns; and not only the subject of general enactments, but also of special charters—it seems difficult upon principle to account for this decision of the Court; upon which however we are not desirous of making further comment, but leave the reader to form his own opinion.

In the fifth year of this same reign, two years after the ^{1551.} granting of this charter, there are entries in the corporation book of the admission of freemen; some of them are entered ^{Admissions.} as belonging to particular companies, the latter apparently for the purpose of trading.

Two years afterwards, the return of members for this ^{1553. Members.} borough was disputed on the question, whether Maidstone was entitled to have burgesses or not; and the charter was directed to be perused, and the burgesses to absent themselves from the House. What was the final result of the inquiry does not appear, but it was obvious that the charter could not afford any information on the subject, as in fact the return of members is not adverted to in it:—but Maidstone did not return a member either during this or the following reign.

CHESTER.

In the first year of Edward VI., there appears in the ^{1547.} journals of the House of Commons* of the 16th of November, an entry of the great Bill of Chester for divers liberties—which was read a second time on the 12th of November, and a third time on the 21st of the same month.

This no doubt carried into further effect the provisions

* 1 Journ. p. 2.

Edw. VI. which we have seen in the reign of Henry VIII.,* for the regulation and direction of that important place.

STRATFORD-UPON-AVON.

Before we close our few extracts from the charters of this reign, it may be desirable, as a specimen of a grant, to a place which was intended to have an exclusive jurisdiction, though it does not appear to have ever arrived at the dignity of a parliamentary borough, to insert an extract from a charter

1553. of the seventh year of this reign to *Stratford-upon-Avon*.†— which recites that the borough was an ancient borough, in which a guild was theretofore founded, and endowed with divers lands and tenements, out of the rents, revenues, and profits whereof, a certain free grammar-school for the education of boys there was maintained and supported; and

School. also a certain alms-house, consisting of 24 poor people therein to be kept, was likewise maintained and supported; and a

Alms-house. certain great stone bridge called “Stratford bridge,” built

Bridge. over the Avon, was from time to time kept up and repaired:—

Guild dissolved. which guild was then dissolved, and the lands and tenements thereof had lately come into the king’s hands.

Inhabitants That the *inhabitants* of the borough of Stratford, from time immemorial, have had and enjoyed divers franchises, liberties, &c., by reason and pretence of the guild, and by charters, grants, and confirmations of ancient time made by the kings of England to the masters and brethren of the guild and otherwise; which the *inhabitants* of the borough could not then hold and enjoy, because the guild was dissolved:—by means whereof it was likely that the borough, and the government thereof, would fall into a worse state, from time to time, if a remedy thereto was not speedily provided:—whereupon the *inhabitants* of the borough had humbly besought the king, that he would extend his grace and favour to them for the bettering of the borough, and of the government thereof; and for the supporting of the great charges which they from time to time were bound and ought to sustain and perform; and that he would esteem them,

* Vide ante, p. 1139.

† Vide 14 East’s Reports, 348.

the *inhabitants*, worthy to be made, reduced, and erected Edw. VI.
into a body corporate. 1553.

The king then proceeds to grant to the *inhabitants* of the Inhabitants
borough of Stratford-upon-Avon, that it should be a free
borough for ever hereafter, &c., and *incorporates* them by the
name of the "bailiff and burgesses of the borough," &c.

The king afterwards grants that the circuit, precincts, and Bounds.
jurisdiction of the borough should extend to the like bounds
as they had done from time immemorial, or at any time
afterwards, or before.

MUNICIPAL DOCUMENTS.

We now proceed to extract a few documents from the Boroughs.
records of some of the boroughs at this period, which may
serve in some degree to illustrate our present inquiry.

There are rolls extant relative to *Stockbridge* from the Stock-
2nd of Edward VI. to the 33rd of Elizabeth, throughout bridge.
which there is frequent reference made to the rents of the 1548
"free tenants;"—and numerous instances of the mention to
of the "burgages" and their rents—and some houses 1590. Burgages.
and lands are stated to be held freely;—whilst others have
not that addition. Some tenants are described as holding
the premises themselves;—and others as holding premises
in the occupation of other persons.

There is also a list of persons holding lands which are not
called burgages.

There are also the following entries of a later date, from Present-
which it will be collected, that as they are presentments ments.
made by the *jurors* for the town, they were clearly proceed- Jurors.
ings at the *court leet*: and they mention at that court Court
"strangers who come into the borough upon petition:"—which Leet.
serves further to illustrate the term "stranger," as one not
born, nor permanently residing before in the place; but
allowed to come there upon his petition to that effect:—en-
tirely corresponding with the bye-laws we have before seen
of the Cinque Ports; and with the doctrine relative to this
point, which we have throughout our remarks enforced as
well by principle, as by precedent.

Edw. VI. At a court of the borough of this date, the *jurors* for our
 1702. lady the queen are mentioned, with the homage: (upon
 1 Anne. which 36 are named; and at the bottom is added "sworn.")

Strangers. The jurors, upon their oath, present that no stranger or
 denizen who shall come into this borough upon petition, or
 by sufferance, shall give any vote in the choice of bailiff,
 constable, or burgess. And if any bailiff shall return any
 person so voted for by such stranger, he shall forfeit of his
 goods and chattels, 50*l*.

1703-4. Two years afterwards, there are the following present-
 ments:—

Strangers. The jurors aforesaid, upon their oath present, that no
stranger who shall come into this borough upon petition,
 shall give any vote in the choice of bailiff, constable, or
 burgess. And if any bailiff shall return any person so voted
 for by such *stranger*, he shall forfeit 50*l*.

Freedom
by servi-
tude. Also, that Robert Tarrant hath taken up his *freedom* by
servitude; whence happened to the bailiff for a relief, 6*d*.;—
 and he is admitted.

Also, that W. Gearle hath taken up his *freedom* by *servi-
 tude*; whence happened to the bailiff for a relief, 4*d*.;—he is
 admitted.

After which, the items of the rents of assise, and of the
 Burgages. free tenants, and the tenants of the several *burgages*, are
 also entered.

And there are presentments of many concealments.

Appren- These presentments at the court leet, of persons as having
 tices. taken up their *freedom* by *servitude*, are very striking. And
 although similar entries are not found, it is not impro-
 bable, that had other presentments been preserved, which
 they seldom were, they would have contained similar find-
 ings by the juries.

Court That such a fact should be presented at the court leet is
 Leet. altogether consistent with the Saxon laws, and those of our
 early kings after the Norman Conquest; and is also con-
 sistent with the grounds upon which we have placed the
 freedom by apprenticeship:* but it is unconnected, if not

* Vide ante, p. 722 et 762.

altogether inconsistent, with any notion of corporate rights or privileges. Edw. VI.

It must be remembered, that the *burgesses* of Stockbridge were mentioned in Domesday;—that it has never been incorporated—that it has still a court leet—and that the election of members of Parliament has ever been exercised by the *inhabitant householders paying scot and lot*. The result of which is—that although this place was never incorporated, still *apprentices* became *burgesses by servitude*;—and that they were presented for that purpose at the *court leet*, which they would not have been had they not been *resiants*. And considering how the right of election has been exercised, it seems clear, that the *burgesses* of Stockbridge, whose existence was recognized at so early a period, were the *free inhabitant householders—paying scot and lot—presented—enrolled—and sworn—as resiants—at the court leet*. Domesday
Not incor-
porated.
Scot and
Lot.

SANDWICH.

The same doctrine is also established with respect to *Sandwich*, by the following entry from the books of that borough, in the sixth year of Edward VI.:— 1553.

“No man to have a voice in the election, nor to enter into the election among the *free barons*, but if he be a *free baron—indweller—householder*—of the same town; on pain of 40s., to be levied *to the use of the said town*. All manner of elections and common assemblies in this town to be made by the *barons, indwellers, and householders* of the same town, and by none other.” Barons.

This entry also most clearly confirms the doctrine we have before contended for, that the *finés, and all payments of that description, went into a common purse, which belonged generally to the public, and was properly to be accounted for to the whole body of the burgesses*. Public
stock.

WELLS.

In the books of *Wells*, in the course of this reign, two persons are disfranchised; the entry being “*sunt a societate exonerati*.” 1546.
Disfranchised.

Edw. VI. And in the third year of Edward VI., it was agreed, by
 1548. the assent of the *burgesses*, that no burgess do hereafter *dwell*
 Dwelling. and *abide* out of the city above the space of one whole year,
 Scot and bearing no scot or lot; or to lose the freedom and liberty of
 lot. the city, unless licensed by the master.

This regulation was in entire accordance with the common law—allowing for temporary absence, provided scot and lot was still paid, the domicile of the party continuing in Wells; or even a residence elsewhere, if it was for a reasonable cause, allowed by the governing officer of the place, who was to give his license for it.

In similar accordance with the common law, no person was
 Strangers. to entertain *strangers* without license, nor with license, but such as they would be accountable for:—for by that means they might, after a year and a day, become permanent inhabitants—or the borough might be made responsible for their acts; and therefore the persons entertaining them, are required to be accountable for them.

Sons. *Sons* of burgesses are also admitted in the same manner, as appeared in the former entries. And there is to be a gathering amongst the burgesses and inhabitants being householders, amongst other public charges, for the support of the conduit and the shambles.

Notwithstanding the common law, and these agreements and ordinances in confirmation of it, yet non-resident burgesses were for a long time admitted and sanctioned in Wells.

1552. The Duke of Somerset had so entire a control over the
 House of members returned to the House of Commons, that it was
 Commons. not necessary for him to exercise any influence over the elections; but when the Duke of Northumberland had removed his rival, the influence of the deceased Somerset still prevailed in the House; and Northumberland, finding them disinclined to further his measures, was constrained to summon a new Parliament; and in order to secure the election of persons more compliant with his views, sent *letters* directly to the *electors*, *commanding* them to *return*

the *persons nominated* to them; this, being the most general Edw. VI.
and extensive interference with elections which had as yet 1552.
occurred, requires to be marked by the insertion of one or
two of those letters, which may suffice to show their general
nature.

CECIL PAPERS.

In the fifth year of this reign, in the Cecil papers, amongst the Lansdowne MSS., we find the following letters: *—

“Trusty and well beloved, we greet you well, forasmuch as we have, for divers good considerations, caused a summonition of a Parliament to be made, as we doubt not but ye understand the same by our writs sent in that behalf to you, we have thought it meet, for the furtherance of such causes as are to be propounded in the said Parliament, for the common weal of our realm, that in the election of such persons as shall be sent to the Parliament, either from our counties as knights thereof, or from our cities and boroughs, there be good regard had that the choice be made of men of gravity and knowledge in their own counties and towns, fit for their understanding and qualities to be in such a great council. And, therefore, since some part of the proceeding therein shall rest in you, by virtue of your office, we do, for the great desire we have that this our Parliament may be assembled with personages out of every county of wisdom and experience at this present, *recommend two gentlemen* of the same county, being well furnished with all good qualities to be the knights of that shire; that is to say, Sir William Drury, and Sir Henry Bedingsfeld, knights;” to whom we would ye should signify this our meaning, to the intent they may prepare themselves to enter this *office*, being for the weal of their country. And likewise our pleasure, will, and command to you is, that ye shall give notice, as well to the freeholders of your county, as to the citizens and burgesses of any city or borough, which shall have any of our writs by your direction, for the election of citizens and burgesses, that our pleasure and *commandment* is, that

* Cecil Papers, 1552—1559, MS. Lands. No. 3, p. 19.

Edw. VI. they shall choose and appoint, as nigh as they possibly may,
 1552. men of knowledge and experience within the counties, cities, or boroughs ; so as by the assembly of such we may, by God's goodness, provide, through the advice and knowledge of the said Parliament, for the redress of the lacks in our common weal ; and that yeshall, at or before the day of the election, communicate this our purpose to the gentlemen, and such other our subjects of the same, being freeholders of that county, as shall seem requisite, so as that they may both see our consideration and care for the weal of the same shire, and our good memory of these *two persons whom we have named unto you.*

"Your's," &c.

The like letter for Sir Richard Cotton, knight, to be knight of Hampshire ; *mutatis mutandis ut sequitur.*

"At this present we *recommend* to you, and to the gentlemen, and all other our freeholders of the same county, our right trusty and well-beloved counsellor, Sir Richard Cotton, knight, comptroller of our house, one who we need not to commend, being for his place with us, of no less knowledge than authority, and in that county having also such experience, as is requisite for one that shall in our said Parliament have always consideration to the weal of the same shire ; and therefore our pleasure is, that ye shall, at or before the day of the election, communicate this our purpose to, &c. of so fit a person for this office. And for the rest we doubt not, but ye will, seeing our consideration herein, order that the place may be furnished laudably, and as it becometh."

*Letter to Sir Wm. Cecil.**

"Our humble duties premised, your mastership's letter, sent by your servant, Mr. Williams, we have received, perceiving thereby your good will of long time borne, and now per-
 Grantham. formed to the town of *Grantham*, that even as in all other
 1552. your worthiness ye have won unto yourself an immortal fame, so in this ye have deserved a perpetual memory, and

* Cecil Papers, 1552—1559, MS. Lands. No. 3, p. 38.

such thanks at our hands that we must needs accompt ourselves so much bound unto your mastership, that we can never be able to deserve your goodness, but evermore to wish some occasion that your mastership might have some trial and taste of our good wills. Your desire in your said letter, touching the *appointing of one of our burgesses*, we have most gladly *accepted and granted*, and have *requested the sheriff to repair unto you for the nomination of the person*. For the other, before the receipt of any of your letters, at the special suit of the Earl of Rutland, we have agreed to continue our ancient burgess, Sir Edward Warner, knight; from which agreement, made at the instance of so noble a man, we cannot with our honesties digress; so that we be not able to perform your request made in the behalf of Mr. Hussey. It may further please you, sir, that we know the conveyance for the assurance of the school will ask a charge, we would be glad to know the same, that we might provide and send up money therefore. Thus, as we are bound daily to pray for the continuance of your health, so we do most heartily wish the increase of your honour.

“From Grantham, the 8th day of February, anno 1552.

“By your mastership’s own assured to command, the aldermen and his brethren of Grantham.”*

In the seventh year of this reign, there was an assise of fresh force in the hustings at the Guildhall of London,† before the sheriffs, who were the judges there in a case between Pannel plaintiff, and Moore and the corporation of mercer’s defendants—wherein the plaintiff, as parson of the church of Honey Lane, claimed a cellar under the same church:—Moore appeared in person, and the corporation by bailiff, whose warrant was demanded; he had none; and it was objected that they could not appear by bailiff without a license. This is in the present day considered as clear law: although in this case the point seems to have been much discussed on divers days, authorities being cited on both sides, and the opinion of the judges asked:—as if the doctrine of

Edw. VI.

1552.

1553.

* Vide etiam, Hume, chap. 35.

† Plowd. p. 89, 91.

Edw. VI. corporations was not at that time fully understood, although
 1553. they had then become very general.

IRELAND.

It only remains, after the few charters we have extracted in this reign, to add a short minute of those which occur in Ireland at this period.

Dublin. *Dublin* received a grant of incorporation in the second
 1548. year;* and we apprehend that it was the first time that these privileges were granted to that city, and engrafted upon their original constitution.

It does not recite the charters previously granted by John, Edward I., Edward II., Edward III., and Henry VIII.; for they were confirmed by a separate charter:† but commences by stating, that at the supplication of the *mayor, bailiffs, commonalty, and citizens*, the king, to extend his favour towards them, by the advice of his uncle had granted, that of one *mayor, two sheriffs, commonalty, and citizens*, they should be one body *incorporate*, with perpetual succession, &c.

County of That the then present bounds of the city should be one in-
 itself. corporate county of itself: and from the county of Dublin be exempt. That the sheriffs should be elected, and remain in office as the bailiffs had hitherto been accustomed; and should have within the county of the city the powers that all other sheriffs had; and that no other sheriff should intromit.

Liberty is then given to the mayor, sheriffs, commonalty, and citizens, to alienate all the lands or rents which they held in fee, *burgage*, socage, or by knight's service, from the king or any other person.

With respect to this charter of Dublin it should be ob-
 London. served, that it is granted, like that to London which we have quoted in this reign, "to the mayor, bailiffs, *commonalty and citizens*;" and as their former charters were in precise conformity with those of Bristol, and in this instance the peculiar expression adopted for London is re-echoed for Dublin, it seems impossible not to infer that the rights,

* Pat. p. 5.

† Rot. Conf. p. 4, n. 4

privileges, and franchises of the Irish boroughs, were the same as those in England; particularly as the privileges given by this grant to Dublin correspond so generally with the many English, Scotch, and Welsh charters we have before quoted. Edw. VI.
1548.

The grants of Richard II. and Henry VIII. to *Galway*, were in the third year of Edward VI. confirmed to the mayor, bailiffs, *burgesses*, and *commonalty* :*—and we find also upon the Patent Rolls of the fifth year of this reign,† a grant from the king for the foundation of a college in Galway, which commences with a recital, that the *mayor, bailiffs, burgesses*, and *commonalty* of the town of Galway (much in the same language as the London and Dublin grants) had acquainted him that the pope had usurped his kingly authority as head of the church—and had appropriated certain rectories, vicarages, and tythes, belonging to the church of St. Nicholas in the town of Galway, from the profits of which nine priests were maintained: and that they considering such an act unlawful, in consequence of Henry VIII. having abolished the pope's authority, therefore petitioned the king, as head of the church, to rectify it. Galway.
1549.

1551

The king then declares these acts of the pope to be unlawful, and changes the church of St. Nicholas into a college, and *incorporates* the same—giving the property which had been in possession of the nine priests towards its support. Incorpo-
rate.

In the sixth year of this reign, the king, by a charter which recites, that the *burgesses*, *commonalty*, and *inhabitants* of the town of *Fiddert*,‡ had supplicated him to extend his favour towards them, proceeds to grant, that the *burgesses and commonalty* should be one body *incorporate*; and that by the name of one superior, one reeve, *burgesses*, and “*commonalty*,” should have perpetual succession, &c. &c. Fiddert.
1552.
Inhabi-
tants.

Incorpo-
rate.

That they might yearly elect from themselves one superior and one reeve.

The charter (which is very concise) expressly grants all the privileges, profits, amercements, &c., which the superior,

* Rot. Conf. n. 9.

† Pat. 5 Edward VI.

‡ Fethart.

Edw. VI. reeve, burgesses, and commonalty of *Kilkenny* then enjoyed :*

Kilkenny. which place also received a charter at this period, reciting that of Henry VIII., but as it principally relates to the property of the town—and does not contain any provision material to our purpose, we refrain from extracting it.†

Waterford *Waterford* likewise had a charter granted to it, confirming those which had been previously given by Henry VIII., Henry VII., Edward IV., Henry VI., and King John.‡

The charters of Edward I., Edward II., Edward III., Richard II., and Henry VII., are confirmed to the citizens of *Cork*.§

Rosponste. *Rosponste* likewise received a confirmation of the charters which had been previously granted by Edward III., Richard II., and Henry VIII.||

From these charters to Ireland, we find that the doctrine and practice of incorporation extended itself in that country much in the same manner as it had spread in England ; for the charter to Dublin is one of *incorporation*, whilst that to Galway is merely a confirmation, although a corporation was about the same time created in that place. Fiddert was incorporated, but Cork, and Rosponste, merely received charters of confirmation.

CONCLUSION.

These documents close the reign of the young, the amiable, and accomplished Edward VI.:—a period which throws but little light on the subject of our inquiry. The prerogative of the crown was at that time at its greatest undisputed height.—The commissions which were granted at the beginning of the reign, expressly affirmed that all manner of authority and jurisdiction—as well ecclesiastical as civil—was originally derived from the crown—a doctrine, however unpalatable at the present day, undoubtedly true in its literal meaning.

The authority given to the protector and his council to execute whatever they might deem fit for the public service—

* Pat. 6 Edw. VI. p. 4.

† Pat. 6 Edw. VI. p. 9.

‡ Rot. Conf. 2 Ed. VI. p. 2, n. 2.

§ Rot. Conf. 2 Ed. VI. p. 3, n. 1.

|| Rot. Conf. 2 Ed. VI. p. 4, n. 5.

and the license yielded to the king of making laws for the ecclesiastical government of the country—were certainly concessions too great for the legislature to make to the crown ; for in a constitution so balanced and limited as that of England fortunately is, such legislative powers to be invested in the executive, is a palpable anomaly. Edw. VI.

The dispensing power also in effect gave the king nearly the same authority as the legislature, and this was exercised almost without control. The complete ascendancy of the executive over the Parliament was marked in almost every part of this short reign ; and prevented, as we have observed before, any direct encroachment on the municipal privileges of the cities and boroughs, which therefore remained nearly in their original state ; and we may venture with confidence to conclude our observations on this period by asserting again, that nothing had occurred up to this time to interfere with the doctrine, that throughout England the *burgesses were the free inhabitant householders, paying scot and lot, and sworn and enrolled at the court leet.*

PHILIP AND MARY.

The reign of Philip and Mary, as far as regards the subject of our inquiry, so much resembles, in a considerable portion of it, that of Edward VI., that but a few prefatory remarks will be necessary to introduce the short extracts we shall make in this period. The continued acquiescence of the House of Commons in the wishes and projects of the crown, still rendered any interference with them unnecessary ; and as it was obvious, from the commencement of this reign, that a majority of the commons would be obsequious to Mary's designs, we cannot be much surprised that the beginning of her reign should be marked by the parliamentary repeal of a great portion of the statutes of her predecessor, and of several even of those of her father.

Philip and
Mary.

Her disposition, however, to supersede the religious tenets which had been so lately introduced, called forth greater opposition than was anticipated, and led to a dissolution of the Parliament. But still the acquiescence of the electors rendered any interference with their rights unnecessary; and we shall find, that usurpation and abuse had as yet no commencement, as there was no cause for them.

STATUTES.

1553. Without further preface, therefore, we would shortly observe, that in the first of Mary, after repealing some of the provisions of the last reign, the fifth chapter relates to the limitation of prescription in certain cases, and in the fourth section mentions bodies politic and *corporate*; and the ninth chapter makes further provision for the *corporation* of physicians in London.
- Cap. 5.
- Cap. 9.
- Cap. 7. The seventh chapter of the third session of the first of Mary, relative to the making of cloth, speaks again of *corporate* towns and market towns, and enacts, that every person *inhabiting* in any cities, boroughs, or towns *corporate*, or market towns, where cloth-making had been used, might make all manner of broad cloths.
- Inhabiting
Corporate
1554. The first chapter, 1 & 2 Phil. & Mary, touching letters patent, to be signed by the queen, confirms all which were under the queen's sign manual.
- Cap. 1.
- Cap. 7. The seventh chapter of the same year provides, that all persons who then *inhabited* and *dwelt*, or *thereafter* should *inhabit*, or *dwell* in the country, out of any cities or boroughs, towns *corporate*, or market towns, should not sell any wares in such cities, &c. by retail, except in open fairs.
- Inhabit.
Corporate.

But there is a proviso that this act shall not extend to any person then *dwelling* or *inhabiting*, or thereafter to dwell or inhabit, who should be free of any of the guilds and liberties of such cities, boroughs, towns *corporate*, or market towns; but that so being free, they might sell the same as other persons who are free of the cities, &c. And there is also a proviso for those who sell cloth of their own making, and to preserve the liberties of Cambridge and Oxford.

11

This statute, with reference to the history we have before given, as well as to the confused doctrine of the rights of freemen, which afterwards became general, is of importance. It commences with a recital, that the ancient cities, boroughs, towns *corporate*, and market towns had been very populous, and chiefly *inhabited* by merchants, artificers and handicraftsmen, but that they were likely to come very shortly to utter destruction, ruin, and decay, because persons *dwelling* in the country not only occupied the arts and mysteries where they dwelt and occupied, but came into the cities, &c. to sell their wares: therefore the above provisions were made to remedy these mischiefs, by a general prohibition; from which those who had been admitted as freemen were excepted.

Philip and Mary.
1554.

This enactment had a strong tendency to confirm the distinction amongst the freemen to which we have before alluded; viz. that although the bulk of them were admitted according to the ancient form and practice, and the original principles of our constitution, as the freemen, or *liberi homines* of the common law; yet others had of later times been admitted as *freemen* for the purpose of *trading* only, of which many instances may be found in different boroughs—as Portsmouth, Huntingdon, &c.

Liberi homines.

Nor was this unreasonable; because, as all these provisions were enacted for the benefit of the cities and towns, and it is a principle of law, that all persons may renounce any benefit given for their own advantage; if the cities and towns thought fit to admit any persons as *freemen* in order to enable them to *trade* within their districts, which was in diminution of their own privileges, no one could complain of their so doing:—but, on the contrary, it was perfectly consistent with reason, that they should be thus enabled to concede a partial abandonment of their own rights for the advantage of others; particularly when it was by no means impossible, that it might be conducive to the advantage of their place, whilst the injury they received, might possibly be of the slightest importance.

Freemen to trade.

These, in all probability, were the grounds of this enactment,

Philip and Mary. which, though not intended to have such an effect, was in truth the cause of introducing that confusion with respect to different classes of freemen, which it is now extremely difficult to induce any person to attempt the trouble of unravelling.

1554. Cap. 8. In the act repealing the provisions against the see apostolic of Rome, and for the establishment of ecclesiastical and civil possessions, the application of *corporate* terms to those bodies, as in ancient times, appears again to have been adopted; and in the 51st, and subsequent sections, spiritual bodies, politic or *corporate*, are repeatedly mentioned.

Cap. 14. The act for the making of satins and fustians in Norwich, speaks of the *inhabitants* in the same manner as we have seen in previous statutes relative to that place, as well as of persons being made *free* of that city, and admitted into the fellowship of that craft, apparently for the purposes of *trade*, as referred to before in the seventh chapter.

And we may generally observe, that the statutes of this reign, which refer to any particular places, as Bridgwater—Halifax—Cambridge—Oxford—all refer to the privileges, benefit, and profit of the *inhabitants* of those respective places.

1555. Cap. 18. The 18th chapter of the 2d & 3d Philip and Mary, referring to the grants of commissions of the peace, which had been made to the mayors, recorders, and other grave men and *inhabitants* of certain ancient towns *corporate*, not being counties of themselves, and to others; provides, that such commissions shall remain good, notwithstanding the grant of any other commission for the conservation of the peace, for any shire, lathe, rape, riding, or wapentake.

These observations will close the extracts which it is necessary to make from the statutes of this period.

CHARTERS.

Considering the shortness of this reign, many charters were granted during it, some of which are important from the time in which they were conceded, as well as from the

varying constructions which have been put upon them by Philip and the House of Commons. Mary.

The following is a list of the municipal grants on the Patent Rolls, at the Rolls Chapel, in the order in which they occur.

1553.—1st Mary.

- Par. 1. Bristol
- Par. 2. Litchfield*
Aylesbury
- Par. 3. Chippenham
Buckingham
Dover
- Par. 5. Sudbury
Maldon
Shefford
- Par. 7. Lyme
Bridgwater
Wells
- Par. 9. Hertford
- Par. 10. *Banbury*
Derby
- Par. 11. Bedford
- Par. 15. Wiche
Leominster
Ludlow
Brackley

1553-4.—1st and 2d Mary.

- Par. 3. Lyme
- Par. 5. Maldon
- Par. 8. Boston
Oxford College
Beverley
- Par. 9. Northampton
- Par. 10. Southampton
- Par. 11. Torrington
Winchester
- Par. 12. Oxford College

1554-5.—2d and 3d Mary.

- Par. 6. Thaxted
- Par. 7. Launceston
Kingston-upon-Thames
Wincanton
Dunmow.
- Par. 8. *Higham Ferrers*
- Par. 9. Great Yarmouth
Oxford College

1555-6.—3d and 4th Mary.

- Par. 2. Northampton
Newcastle-upon-Tyne
Newport, *alias* Launceston.
- Par. 3. Axbridge
- Par. 6. *Abingdon*
- Par. 8. Baliol College, Oxford
- Par. 11. Ivilchester
Ipswich

1556-7.—4th and 5th Mary.

- Par. 5. Southampton
- Par. 10. Lynne Regis

1557-8.—5th and 6th Mary.

- Hindon
- Chyping Wycombe
- London

* Vide post, p. 1182.

Philip and Mary. The charter to *Bristol* was one of confirmation—that to *Litchfield* was to the following effect:—

Bristol. After confirming that of Edward VI. it recites, that for the
Litchfield. faithful services performed in the time of the rebellion by the
1553.

Steward. them that they might, with their *steward* or *common clerk*, have jurisdiction to hold weekly pleas of assise, &c., with powers of attachment.—That they should not be impleaded before any justices out of the city, concerning any lands, &c. which they hold within it.—That they should have all the fines for its improvement. And there is also a grant of a prison, as in the previous charter of Edward VI., with powers of perambulation.—That the city being then contained within the county of Stafford, should thenceforth “be separated distinct, and, in all things entirely divided and exempt from “the same county, and be a city by itself, and *not parcel of “the county of Stafford*—but be called, reputed, holden, and “considered, the county of the city of Litchfield for ever.”

County of
itself.

That the bailiffs, *burgesses*, and *citizens*, should have one sheriff, and might annually elect *from among themselves* one burgess of the city to be *sheriff*; “and every burgess so “elected, shall take an oath,” &c.

Sheriff.

Non-intro-
mit.
Writs.

That no other sheriff should intromit—and that all writs and mandates should be directed to him, as had been accustomed to the sheriff of the county. A county court is then granted—and that all the fines should be *for the benefit of the town*.

Abiding. That the bailiffs, citizens, their *heirs* and successors, whilst
Juries. they should be *abiding* in the city, should not be put with
Inhabitants. foreign men—and that foreign men should not be put with them, the said *inhabitants*, in any assises, &c.

The senior bailiff is then appointed escheator—with grant of forfeiture of victuals in aid of the farm.

Justices. The bailiffs are to be the justices of the peace—and cognizance of pleas—a recorder—and coroner are added—and the bailiffs are to serve the office of clerk of the market, &c.—freedom from toll—and a confirmation of all previous liberties close the charter.

Edward VI. having incorporated Litchfield, it was not necessary for this grant to touch upon that point. Its principal object seems to have been to provide more completely for its *separate jurisdiction*, and *altogether to exclude the sheriff*. Philip and Mary.
1563.
Separate jurisdiction.

A steward therefore to preside at the court leet is granted, and it is made a county of itself, having its own sheriff: with the full return of writs. Steward.

Neither does this charter affect, or pretend to affect, the right of returning members to Parliament.

Litchfield had anciently sent representatives, in the reign of Edward I., Edward II., and Edward III.; after which it intermitted till the reign of Edward VI., when it returned again: being one of those ancient boroughs which were allowed to exercise the parliamentary privilege, on the ground we have seen partially acted upon in the reign of Henry VIII. Members.

As that principle appears also to have been adopted by Queen Mary, and some peculiar charters, with reference to the return of members, were granted in this reign; it becomes material now to enter more fully into the parliamentary history than heretofore—particularly as, although at the commencement of this reign, Parliament so readily complied with the wishes of the crown, that no interference with the right of election was necessary; the resistance which the House of Commons afterwards made to the queen's views with respect to religion, her marriage, and the restoration of the monasteries, made exertions requisite to obtain a majority in that House. Hence it appears that even Spanish money was used for the purpose—and the members for that day are open to the serious opprobrium of having received foreign bribes to influence their votes. Parliamentary history.

Still it is due to the crown to say, that the unconstitutional interference with the right of election was not so directly effected by the charters of the crown; or generally speaking, by the acts of the sovereigns who granted charters of that description—for they rarely interfered directly with the right of election; but the prevalent usurpations upon that right

Philip and Mary. 1553. Perversion of charters. were the result of the chicanery and sophistry of those who were from time to time desirous, for their own interests, of perverting the charters of the crown to so improper a purpose—and whose efforts for that object were, strange to say, too often rendered effectual by the decisions of the House of Commons, and the courts of law.—As illustrative of which, after a few prefatory observations, we shall take this opportunity of giving a parliamentary history of Litchfield. It should, however, be first observed, that this charter was fully and legally competent for the purposes for which it was granted—the queen giving nothing but what she had the power to dispose of by virtue of her prerogative, and which she could legally and constitutionally grant.

Admitting burgesses. It must not be overlooked, that neither of these charters provide any mode of nominating, making, or admitting burgesses or citizens, or by whatever other name they are called. No such power is given to the mayor or common council. Either therefore the burgesses or citizens must be the "*inhabitants*" at large, without any restriction, selection, or previous admission;—or they must be the *resiants*, *presented*, *admitted*, and *enrolled* at the court leet. The first is surely too undefined to be the acknowledged mode of obtaining burgess-ship; and no trace of such a state of things is to be found any where in our law, or to be deduced from any of our institutions. The latter mode, of selecting some of the inhabitants—of pointing out a defined and recognized body, actually existed. There was a court *leet*, and at that court any inhabitant householder paying scot and lot ought, as a *resiant*, to have been *admitted* and *sworn*;—and there must have been a *suit roll*, upon which all the *resiants*, who had been presented as such by the jury, ought to have been *enrolled*. Such a body has been recognized by our laws as long as they have existed; and the only question remains, were they the *burgesses*?—if they were not, who were?—what other legal mode of making burgesses is even suggested?—or what is so consistent with the facts which actually existed? As for the claim of the mayor and com-

Leet.

mon council to admit burgesses, it is without the slightest substantial ground of right. Can then any dispassionate person doubt who the burgesses in this place anciently were?—
 Nothing has since taken place to alter their nature—and therefore they ought still to remain the same.

Philip and
Mary.

1553.

It might perhaps be said, that the term “burgesses” in this charter means the 24 burgesses; and the beginning of this clause may be quoted to confirm that assertion. But upon a careful perusal of the whole it will be found impossible to support this position—and it appears most distinctly that the terms “burgess” and “citizen” were synonymous.

Burgesses.

The burgesses and citizens are to elect from among themselves one burgess to be sheriff; by the provision for future elections, the burgesses and citizens are to elect from amongst themselves one fit person to be sheriff; and it afterwards proceeds, “every burgess so elected shall take an oath;” from whence it is clear that the burgess mentioned before, and the person to be elected from the burgesses and citizens, were of the same class—and for that class the general appellation was “burgess,” although the term “citizen” is also used to describe them.

The former part of this clause having exempted the citizens *abiding* in the city from serving on foreign juries, the latter part directs that *foreign men* shall not be put *with them the said inhabitants*:—from which it is impossible not to infer, that the *citizens* were the *inhabitants*; particularly as those terms are used in the same instrument with the former expression of *men of the city, &c.*

It should be observed, that in this charter all mention of the court leet, which is referred to in the corresponding clause of that of Edward VI., is omitted. As it was given before, it was unnecessary to repeat it: but it is clear that these courts had not then got into disuse in this reign; because, in the fourth year of Edward VI., the charter to London, granting Southwark to that city, gave also a *view of frankpledge* over the precinct of that borough.

Leet.

Bearing in mind these provisions of the charter, and the observations which arise upon them, we proceed to the

Parliamentary
history.

Philip and Mary. further consideration of the parliamentary history of *Litchfield*.

1553.

Right.

The right of election does not appear to have undergone any precise investigation until the year 1701, when it was resolved by the committee to whom the question was referred, upon loose evidence of two or three of the last preceding elections, covering only altogether a period of from 25 to 40 years, that the right of election was "in the bailiff—magistrates—forty-shilling freeholders—those who held by *burgage* tenure—and such *freemen* only who were *enrolled*, and "paid scot and lot."

Freeholds split

Objection was taken upon the splitting acts, that the *freeholds* had been divided; and as to others, that they were mortgaged; and a right to vote for rent-charges was also insisted upon.

Right.

As to the *freemen*, a strange distinction appears to have been taken between those who were *enrolled* in the *old* and in the *new* book of the Tailor's Company; the latter having been made in pursuance of a bye-law allowed and approved by the justices of assise in the 18 Eliz.; and it was decided, that "only those enrolled in that new book had the right of election."

The burgage jury was mentioned; and some persons having held public offices seemed to be treated as voters. Some were objected to as not paying to the church and poor—some as inmates—some as living with their parents—and others as not being housekeepers.

More anomalous or incongruous decisions than these can hardly be conceived; containing in them, it is true, some points correct in themselves, but which are so mixed and confounded together, that it is hardly possible to draw from them any correct conclusion.

Bailiffs & magistrates.

The *bailiffs* and *magistrates* would certainly have a right to vote; not in respect of those offices, but as *burgesses*.

Freeholders.

The *freeholders* either had the *exclusive* right, or none at all. For if Litchfield, being a county of itself, was within the statute of Henry VI., then the freeholders *only* could have the right of election; and the bailiffs, magistrates, and

burgage holders would all have been excluded. On the contrary, if Litchfield was not within the statute, then the freeholders would have had no right at all. Philip and Mary.
1553.

As to the *burgage tenants* also, we have already shown that such a right of election ought to apply generally to all boroughs, or to none; and that, strictly speaking, it is only applicable as descriptive of the *occupier* of burgage houses, in which sense it resolves itself into the general description of *householder*, or, more properly, "housekeeper." Burgage tenants.

As to the *freemen* we have also already shown, that being of *free condition* was only *one* qualification for a burgess: and that the additional requisites of holding a house—inhabiting—paying scot and lot—and being sworn and enrolled—were also necessary. Freemen.

These resolutions therefore seem to have been founded upon an erroneous view of the statute of Henry VI.—a mistaken inference as to *burgage tenure*, from the fact of Litchfield having been an ancient borough—upon a misapplication of the doctrine with respect to *freemen*—and an incorrect use of the term *enrolment*;—which is applied to the roll of freemen of the Tailor's Company, instead of being referred to the enrolment at the court leet. Such an *enrolment*, with the payment of *scot* and *lot*, are in truth, the only correct parts of these resolutions.

In a petition of 1722, it is stated, that the citizens were elected in the county court; which appears to be a further error, adopted from Litchfield having been made a county of itself. 1722.

AYLESBURY.

The next place occurring in the list of charters granted by Queen Mary is *Aylesbury*, which we have before seen, was not entered as a borough in Domesday; but the *manor*, in the reign of King John, was granted by the crown at fee-farm to the Earl of Essex.* In that of Henry VIII., it came by partition to Thomas Packinton, and Queen Elizabeth released the fee-farm rent. 1553.
Manor.

* Vide ante, pp. 415 et 201.

Philip and
Mary.

1553.
Incorporated.
Return of
writs.
Leet.

Mary *incorporated* the *inhabitants*; giving them a separate jurisdiction, with *return of writs*; and assise of bread. And granted that the bailiff should be the escheator and coroner; that there should be a *court leet*, and that the town should be a county of itself. All which privileges removed it from the jurisdiction of the sheriff, and placed it entirely under the government of its own officers. To these immunities is added that of a market, and the power of returning two members to Parliament.

Parliamentary
history.

Its parliamentary history is somewhat peculiar.

It seems that its members were, for some short time, chosen by the bailiff, nine aldermen, and twelve burgesses.

Corporation
dissolved.

But the *corporation* of the place was *dissolved* by neglect to keep up the community.

1571.
1585.
Constables.

In the 14th and 28th of Queen Elizabeth, the lords of the manor made the returns to Parliament; and the *constables*, the common law officers of the place, who were chosen at the court *leet*, have ever since been the returning officers.

Leet.

1695.
Right.

In the seventh year of William III., the *right of election* for this place became the subject of inquiry; the petitioner insisting that it was in the inhabitants paying scot and lot; the sitting members, that it was in the housekeepers; relying upon a usage of 40 years.

Watch &
ward.

Evidence was given in conformity with the doctrine we have before insisted upon, that those who claimed to vote, had *watched* and *warded*. And objections were taken to voters that they were not *housekeepers*; that they were *inmates*, *boarders*, or *servants*; and one was objected to on the ground that he was not an inhabitant for want of *notice* according to the statute: which, referring to the poor laws, establishes that union between these matters, upon which we have frequently remarked.

Right.

The *right* was eventually determined to be in the *householders*. Which, as far as it goes, is consistent with the common law; but the resolution was insufficient, inasmuch as that it did not require that the householders should be "*housekeepers*" or occupiers;—or in the ancient legal language, "*resiant*;"—or in the more modern—"inhabitants."

Nor did it require them, according to the common law, ^{Philip and Mary.} to be *sworn* at the court leet, which was held within the borough.

In the tenth of William III., the same right was agreed 1698.
upon by the litigant parties; a further question with respect to alms being raised, which being a general disqualification, is unnecessary to be inquired into with reference to any particular borough.

The celebrated proceedings in 1703, by Ashby against 1703.
White and others the constables of Aylesbury, relating chiefly to the general privileges of the House, are also passed by, as immaterial to this particular inquiry. Excepting we should observe, that the Lords, in their resolutions upon those proceedings, adopted the ancient common law term of "*freemen*"—used in Magna Charta, as descriptive of the subjects of this realm who were entitled to its general privileges.

The act which passed in the 44th George III., relative to 1804.
the right of election for this place, is also beside the present inquiry.

CHIPPENHAM.

The next place which occurs in the list of the charters of 1553.
Queen Mary is *Chippenham*; the parliamentary history of ^{Parliamentary history.} which is also peculiar.

We have already seen that it is not mentioned in Domesday as a borough. But it returned members to Parliament, with some considerable intermissions, from the reign of Edward I.

Queen Mary granted it a charter of *incorporation*, in the Incorporation.
first year of her reign, at the petition of the *men and inhabitants* of the town, directing that it should consist of a bailiff and 12 burgesses, by the name of "the bailiff and 12 burgesses of Chippenham."

That queen also included in her charter, a grant that there should be two burgesses to Parliament, who were to be Members.
elected by the bailiff and burgesses.

This authority to return members was altogether unneces-

Philip and Mary. sary, as they had enjoyed that privilege from the earliest period; and if the election was to be by the *ancient* "*burgesses*," in that respect also the charter was unnecessary.

1553.

On the contrary, if under that term was intended to be introduced a new class of voters, the charter of the crown could not be legally operative for that purpose: as was decided by the celebrated committee of the House of Commons in the 21st year of James I., whose proceedings are reported by Mr. Serjeant Glanville.*

1623.

The petition at that time, appearing by the Journal to have been by the *inhabitants*, was heard six several times before the committee, in the presence of most of the parties, witnesses and counsel, on both sides.†

Returns.

It appears that the returns after the charter were the same in form as before, until the third of Elizabeth; when a return was made by the bailiff and 12 burgesses of the borough, which form had continued till this question arose. But it appeared by the proof of witnesses, that at the election for several Parliaments in the reign of Queen Elizabeth, divers burgesses, *inhabitants* of the borough, called *freemen*, claimed to have voices in the elections; though, liking the men that were chosen, they complained not to the Parliament for being excluded. A striking circumstance to show how little *usage* ought to be relied upon in inquiries of this description.

Usage.

1603.
Inhabitants

It further appeared in evidence, to the satisfaction of the committee, that at the election of burgesses for this borough, in the first of James I., the burgesses, *inhabitants* of the borough, called *freemen*, were admitted, and joined in the election of the members, and in the payment of their wages.

1623.

Inhabitants

At the election in dispute, it appeared that the bailiff and 11 of the 12 incorporated burgesses, met at the place appointed, being an upper room, with the doors left open and free for any one to enter, and elected Mr. Maynard; divers other of the *inhabitants* of the borough, called *freemen*, being at that time in the under room, not offering themselves to

* See also Harl. MSS. 6806, p. 101.

† Vide Glanville, p. 47.

come into the upper room, nor to join in the election with Philip and Mary.
the bailiff and incorporated burgesses.

1623.

As for the second seat, the bailiff and five of the 11 incorporated burgesses, gave their votes for Sir Francis Popham, and the other six for Mr. Pym; and not being able to reconcile this difference, the bailiff and all the 11 incorporated burgesses agreed to adjourn the election for the second burgess-ship to the 23d of the same month—the other burgesses and *inhabitants*, called *freemen*, continuing still in the other room, neither called, nor offering, nor denied, to come up; and so the assembly was for that time dissolved.

At the time and place appointed by adjournment, the bailiff and all the 12 incorporated burgesses met, and 32 of the freemen also attended. The bailiff and five of the incorporated burgesses gave their votes for Sir Francis Popham, and the other seven incorporated burgesses for Mr. Pym; and all the other burgesses and *inhabitants* called *freemen*, being demanded by the bailiff for whom they gave their voices, all gave them for Sir F. Popham. Two indentures were made; the 32 burgesses not incorporated signing one of them.

The committee resolved, first,* that “they would forbear giving any opinion, whether the borough was a corporation by prescription before the charter of Queen Mary; it not being material to the question: for *the borough might have right to return members to Parliament though it was no corporation.*” Which is a distinct determination, by the body competent to decide the question, that *the return of members to Parliament was not a corporate right*;—and that the incorporation was—as we have throughout contended—a matter altogether collateral to the ancient borough privileges.

Resolutions.

The committee also resolved, that “the charter of Queen Mary did not, nor could, alter the form and right of election; so that if before, all the burgesses and *inhabitants* called *freemen*, or any other larger number of qualified persons, had always used, and ought of right to make the election,

* Glanv. 53.

Philip and
Mary.

1623.

Corporate.

then the charter, although it might *incorporate* this town, which *was not incorporate before*; or alter the name or form of the corporation in matters concerning only themselves, and their own government, rights, and privileges; yet *it could not alter and abridge the general freedom and form of election of burgesses to Parliament, wherein the commonwealth is interested*. For then, by the like reason, that it might be brought from the whole commonalty, or from all the burgesses of a town, to a bailiff and 12; so might it be brought to a bailiff and one or two burgesses, or to the bailiff alone; which is against the general liberty of the realm, that favoureth all means tending to make the election of burgesses to be with the most indifferency; which, by common presumption, is when the same are made by the greatest number of voices that reasonably may be had, whereby there will be less danger of packing, or indirect proceedings. And howsoever the said letters patent, touching some other points, may have made an alteration in the borough; yet, *touching the matter of election of burgesses to the Parliament, the form remaineth, and the same course is to be held as was of right, before the said letters patent.*"

It was therefore further resolved by the committee, that more than the bailiffs, and the 12 incorporated burgesses, ought to have voices in the elections for Chippenham.

And as it had been urged, that the former returns, by bailiff and burgesses, might well be satisfied, if only the bailiff and 12 joined in the election, it was resolved, "though that were true, yet they would be more proper if the bailiff, and all the other burgesses, *freemen*, and *inhabitants*, be therein comprised."

"And as to the course since the 35th of Elizabeth, it *was to be intended, that it was only by colour of the void charter, and of precedents passed in silence and without opposition.*"*

Usage.

Another authority for disregarding *usage* on these subjects.

House-
holders.

In the printed Journals of the House, those who are in Glanville described as "burgesses, inhabitants, and freemen," are called "burgesses and *householders*;" and the returns

appear to have been by the “ballivus, burgenses, et alii Philip and Mary.
homines.”

1623.

The question also, as stated in the Journals, appears to have been, “Whether the *burgesses at large* had the right of election?” apparently assuming, that the *inhabitants* were described under those terms. Inhabi-
tants.

It is a singular circumstance, and difficult to be accounted for, that notwithstanding this ample inquiry into the right of election in 1624, in which nothing is said of any burgage tenure right of election, or any peculiar privilege belonging to any particular class of voters—the only question being between the select body of *incorporated burgesses*, and the *inhabitants*, or *freemen* at large; yet, in the third of William and Mary, the right of election was determined to be in the *occupiers*, or *inhabitants*, of certain ancient houses, called free-houses or burgage-houses. Occupiers.
Inhabitants.

1691.

There is no pretence for suggesting, that any burgage tenure right existed for voting at Chippenham; nor is there any mode of accounting for this decision, excepting the following—which, it is obvious, ought, properly speaking, to have nothing to do with the right of burgess-ship, or the returning members to Parliament.

In the fourth year of the reign of James I., it was determined, in *Gateward's case*,* that no *inhabitant* could claim a right of common, except by *prescribing* in right of a house; from which it necessarily follows, that the house must have existed from time immemorial—and consequently no person could prescribe for such a right, unless in respect of an *ancient* house. 1606.
Gateward's case.

At Chippenham, there is a large, valuable, common meadow, adjoining the town, in which the occupiers of certain ancient houses claim certain common rights. This they did, no doubt, under the authority of this case; and in such a manner the occupiers of the houses might have obtained peculiar privileges—but not with reference to their right of being burgesses, or their right of voting for members of Parliament. Rights of
Common.

Philip and
Mary.

Calne.

Similar rights were enjoyed over the commons in the neighbourhood of Calne, in respect also of certain ancient houses in that borough—no doubt under the authority of the same case. The commoners, the occupiers of those houses, in the year 1710, set up their exclusive right to vote for members of Parliament, and the committee determined in favour of their claim; but in the year 1723, their right was rejected, and they have never since enjoyed it.

1694.

Right.

However, in the sixth year of William and Mary,* the right of election at Chippenham was *agreed* to be in the *freemen and inhabitants* of the *borough houses*, who ever afterwards exercised that right, till the late act of Parliament; notwithstanding a petition of appeal was presented in favour of the *scot and lot* voters in 1804; but no proceedings were had upon it—for nobody appeared to support the petition, and consequently the order for taking it into consideration was discharged. It is suggested, that a compromise put an end to the inquiry.

BUCKINGHAM.

1553.

The next charter, in order of time, is that to the borough of *Buckingham*. This was granted on the 27th of January, in the first year of the queen's reign.

Inhabi-
tants.

It commences with a recital,† that her faithful subjects of the town of Buckingham had, for their better regulation and government, and the amelioration of the town, humbly besought her, that the town and its *inhabitants* might be *incorporated*; and that a body *corporate* might be made and created, of one bailiff and burgesses. And it speaks of their faithful adherence to the queen, and the assistance they had given her, during the rebellion of the Duke of Northumberland, then attainted of high treason.

Town and
parish in-
corporated

It directs, that the *town* and *parish* of Buckingham should be a *free borough*, *incorporated* of one bailiff and 12 burgesses, by the name of “the bailiff and burgesses of the

* Et vide etiam, 24 Jour. 65, 1 Doug. 329, 1 Peck. 264.

† 1 Pet. MS. In. Temp. Lib. p. 3.

"borough and *parish* of Buckingham;" and that they should be a body *corporate*, with the usual corporate powers.*

Philip and Mary.

It then provides, that the 12 burgesses should be, and be called, "the principal burgesses;" and they are required to be "*commorant* and *inhabitant* within the parish of Buckingham;" and to have a qualification, of lands and free tenement to the value of 3*s.* 4*d.*, or goods and chattels to 20*l.*

1553.
Principal burgesses.

Qualification.

A steward is also given, with power to appoint a deputy.

Steward.

John Lambard is made the first bailiff, and is described as an *inhabitant* of the borough and parish; and it is directed, that he shall take an oath faithfully to execute his office.

First bailiff.

Oath.

Twelve *inhabitants* of the borough and parish are named as the first 12 principal burgesses; who are also to take their oaths, and to be the *common council* of the borough and parish.

First 12 burgesses.

Common Council.

Authority is given to the bailiff and burgesses to hold a court, before the bailiff, three burgesses, and the steward, or his deputy, in the common hall, or other more convenient place in the borough, from three weeks to three weeks, to hear and determine, by pleas, all pleas and actions of debt, account, contracts, transgressions, *vi et armis*, or otherwise; and all actions, real, personal, and mixed, arising within the borough and *parish*, and the limits, bounds, and liberties of the same, not exceeding the sum of 5*l.*, with power of summoning, &c.:—and for default of lands and tenements within the borough aforesaid, to attach by the body; and similar processes and executions as in the court of the county of Bucks, before the queen's justices of the court there.

Court.

All fines and amercements are given to the said bailiff and burgesses, to be expended for the use and profit of the bailiff, burgesses, and commonalty of the borough and parish.

County Court of Buckinghamshire. Fines.

And for the better support of the borough and *parish*, the bailiff and burgesses are declared to be capable of purchasing, receiving, and taking manors, lands, &c., situate, lying, and being within the borough, which were not immediately held of the queen in capite, nor by military service.

Hold lands.

* See before, p. 1103, as to parishes.

Philip and Mary. A prison, or gaol, in some convenient place within the borough, is also granted.

1553.
Prison.
Frank-
pledge.

View of frankpledge of all *inhabitants, residents*, as well entirely as not entirely residing within the borough and *parish*, and within the limits and bounds of the ancient borough of Buckingham. And all things belonging to view of frankpledge. To be held in the common hall, or house within the borough, twice in the year, within a month of Michaelmas and Easter, before the bailiff and *steward* of the borough and parish aforesaid only for the time being.

Bounds. The bounds of the borough and *parish* are then set out with particularity; and all the lands and tenements within them, are declared to be part and parcel of the borough and parish.

Assise of bread, &c. Assise of bread, wine, and beer, and other victuals, and of weights and measures, are also added.

Bye-laws. And power is given to the bailiffs and burgesses, by the common council, or the major part of them, of making, from time to time, laws, statutes, and ordinances, for the rule and government of the artificers and other *inhabitants*, and for the victualling of the said *parish* and borough; so that they were not repugnant to the laws and statutes of the realm, or to the queen's prerogative.

Election of bailiff. Also it is granted to the bailiff and burgesses and their successors, that the burgesses might every year meet together, within the borough and *parish* of Buckingham, and there to name two men, then being principal burgesses of the same borough, before the *other inhabitants* then there present, to the intent that such *other men and inhabitants*, or the greater part of them, might elect one of those two burgesses so nominated and assigned, to the office of bailiff of the borough and *parish* for the year next following.

Before the other inhabitants.
Men.

Vacancies of Bailiff. And as often as it should happen that any person being bailiff shall die, or be removed from his office, during the year in which he is bailiff, then the surviving burgesses, or the major part of them, might meet together, at a certain fixed day, within eight days, and there name two persons

of the number of the said burgesses, before the other *inhabitants*, to the intent that the other *men and inhabitants* might elect one of those two burgesses to the office of bailiff.

Philip and Mary.

1553.
Inhabitants
Men.

And if either of the 12 *principal burgesses* should die, or *inhabit without the borough and parish*,* or should be removed from his office for any cause, that then it should be lawful for the bailiff and burgesses, when it should please them, within 40 days next following the death or vacation, to meet, and there nominate one or more of the other *persons then inhabitants* of the borough and parish, and those not being burgesses, to be a burgess during his life. And that every person so nominated should be a burgess during his life, or otherwise, if it should seem fit to the bailiff and other burgesses, &c.

Vacancies
of the 12
principal
Burgesses.

And that there should be in the borough two burgesses of Parliament, and that the bailiff and burgesses, upon the writ to them directed for the election of such burgesses, should have power to elect two discreet and honest men to be burgesses of Parliament for the same borough; and that they, at the cost and charges of the borough and parish, and the commonalty of the same, should send such burgesses to Parliament, wheresoever it might be held, in the same manner and form as in other boroughs in the kingdom of England, and in the ancient borough of Buckingham, had been used and accustomed.

Member
of Parlia-
ment.

The bailiff is then appointed a justice of the peace within the borough and parish.

Justice.

The *return of writs*, and execution of them, is also granted; so that no sheriff or other bailiff, or minister, should enter that liberty for the execution of writs, summonses, or attachments, or to execute any other judgment there, except in defect of the bailiffs and burgesses, and their successors, and of other their ministers.

Return of
Writs.
Non-
intromit.

The bailiff is directed to be the escheator and coroner and clerk of the market within the borough:—with a similar non-intromittant clause.

Escheator,
Coroner,
Clerk
of the
market.

It should be observed, that this charter is granted upon

* See also post. temp. Eliz. charter of East Looe, and Truro case.

Philip and Mary. the request of the *inhabitants*; and the officers appointed by it, are described as “*commorant and inhabitant* within 1553. *Inhabitants* Buckingham.” All the powers granted are to be executed within the borough and *parish*; and all other officers and ministers of the crown are excluded, except in default of the officers of the borough. Every clause more or less imports, that those who are to be affected by it must be Resident. *resident* within its precincts. Thus, amongst others, if any person within its jurisdiction could not be attached by his lands, he was to be so by his *body*, which necessarily presumes that he was *resident* within the borough. In confirmation of the observations we have before made with Common Stock. respect to the *common stock*, all fines and amercements are to be expended for the use and profit of the bailiff, burgesses and commonalty of the borough and parish.

It is evident from the clauses relative to the elections, that the *inhabitants* were the corporation; for the capital burgesses are directed to be nominated before the “other inhabitants:”—and in another part it is said, before the “other men and inhabitants,” which latter term we have had frequent occasion to note.

Men. The expression of “men of the borough,” is of common occurrence, as we have already seen, in the early charters, but seems to have been much misapprehended. There can be no doubt, that when used with reference to the lord’s right, it often means his tenants; but used generally, it means the persons inhabiting within some given district—as, the men of the realm—the men of the shire—the men of the hundred, in the case of hue and cry, and the liabilities arising from it: and the men of the borough, town, or vill.

Thus also the writ to the sheriff to elect justices of the peace, was to elect, “in pleno comitatu unum de probioribus et potentioribus comitatûs sui.”*

So also the precept to the sheriff to summon juries is, “quod venire faciat tam 24 probos et legales homines de quolibet hundredo quam 24 milites et alios probos et legales homines de corpore comitatus.”†

* 2 Inst. 174; Lamb. l. i. c. 3; 4 Com. Dig. 497. † Vid. Lamb. 377, l. iv. c. 2.

And it is notorious, that all these persons were required to be *resident* in the counties for which they were to serve; and Philip and Mary. 1553. anciently even in the hundreds.

Buckingham has also a *steward* given to it for the purpose of presiding at the courts, particularly at the *court leet*, Steward. Leet. which was one of his peculiar functions.

This charter also contains a clause for the election of Members. members of Parliament, which we have seen was first introduced into the charter to Wenlock, in the reign of Edward IV. Subsequently such clauses became more general. However, Buckingham had before returned members, though only so recently as the 36th of Henry VIII.

It is mentioned as a borough, as we have seen before, in Domesday, when there were 27 burgesses, who appear to Domesday have *resided* there.*

After Queen Mary had *incorporated* it, the bailiffs, and 12 principal burgesses, returned the members; but, from the decision in the Chippenham case, which we have just quoted, the charter could not legally give them the right. But this is one of the instances in which the charter of the crown seems to have been *perverted* for the purpose of giving the right to the select body, instead of the general body of the burgesses at large. For the words of the charter are, that the "*burgesses*" should elect, which, according to the doctrine in the Chippenham case, ought to be *intended to mean the body at large*; as by its primary signification it clearly does.

On the restoration of Charles II., this matter came before 1660. a committee of the House of Commons for decision; the question being, whether the bailiff and 12 burgesses, or the freemen at large, had the right to elect the members.

And it is said in the Journals, that upon view of several Right. ancient precedents—hearing witnesses—and view of the charter of incorporation—the committee were of opinion, that "the bailiff and 12 burgesses had a right to elect."

But these precedents should have been referred, as laid down in the Chippenham case, to the illegal construction of

* Vide ante, p. 200.

Philip and Mary. the charter of Queen Mary. The witnesses, necessarily could not have spoken to any time, before the grant of that charter: which of itself could not have given the right of election to the select body.

This decision, therefore, was clearly erroneous. It is probably to be attributed to the feeling in favour of the select body of corporations; the control of which also, was at that time, so much the object of the crown and the legislature.

1690.
Petition. In the second year of William III., a petition was presented on the election from this borough, claiming the right of election for the *inhabitants at large*; upon which many former returns were produced in evidence, but the decision was the same as it had been in 1610.

1695. But in the seventh of William III., another petition was presented by divers *inhabitants* of the borough, truly alleging, that it was a borough by prescription, and claiming their right to vote.

But this petition was withdrawn.

1714. Afterwards, in the first year of George I., the right was *agreed* to be in the bailiffs and principal burgesses. The consequence was, that a long investigation took place as to the voters being proper *corporators*; and whether they had taken the *sacrament*, according to the corporation act; and whether they were duly qualified; and the question was involved in all the legal intricacies of *quo warranto* and *mandamus*, and upon points respecting summonses, and other corporate, subtle distinctions.

Dover.
1553. With respect to Dover,* the next in the list, we have already given, in a previous part of this work,† a short account of its parliamentary history.

Lyme. As to *Lyme*,‡ the charter only granted to the burgesses of that place a market and two fairs, with a court of piepowder, and stallage, pickage, tolls, and customs, with the correcting of weights and measures, and the fines, forfeitures, amerciaments, and profits, in them. To hold in fee-farm at

* Vide Glanv. 63. † Vide ante, page 73. ‡ Vide ante, 527—794—823.

6s. 8d. annual rent. And that none should be arrested or troubled during the time of the fairs, but for matters done in them. Philip and Mary.
Other neighbouring fairs not to be prejudiced by that grant.

This charter does not affect the right of burgess-ship.

But in the third year of the same reign, an exemplification 1555.
was given of the charter of the 13th of Edward II.

The parliamentary history of Hertford we have already Hertford.
given.*

BANBURY.

Queen Mary appears to have introduced into the constitution an entire novelty, by giving to a few boroughs,—Banbury, Higham Ferrers, and Abingdon, the power of returning one burgess only to Parliament.†

The charter to *Banbury*, in conformity with the observation we have previously made, *incorporates* the "*inhabitants*;" and includes the "*parish*."‡ Inhabitants
Parish.

It is granted to the *inhabitants* of the town, and after reciting the services which had been rendered to the queen by them, and in order that they might be the better certified of her affection to them,§—it was directed, that the town should be a free borough, *incorporated* of one bailiff, 12 aldermen, and 12 burgesses, by the name of "the bailiff, "aldermen and burgesses of the borough and *parish* of "Banbury." And that the bailiff, aldermen, and burgesses, of the borough and *parish*, should be a body corporate and 1553.

* Vide ante, 176.

† In this reign 10 boroughs commenced returning members to Parliament, viz., Abingdon, Aylesbury, St. Ives, Castle Rising, Higham Ferrers, Morpeth, Banbury, Knaresborough, Boroughbridge, Aldborough. There were also two boroughs restored, viz., Woodstock and Droitwich.

‡ To show what was the legal doctrine as to *parishes*, even subsequently to this period, the following passage is extracted from a case in the reign of Jas. II., where, in an appeal, the second objection taken was, "That it was alleged, that the defendant assaulted the husband of the appellant 'in *parochia* Sancti Martini in 'campis';—now, though that word '*parochia*' has crept into fines and recoveries, "and likewise into indictments, it must not be allowed in appeals. There may be "several villis in one parish; and though this is ruled good in indictments, it ought "not to be so here, because of the difference between an indictment and an appeal; "for in indictments you need not mention the hour, but it must be done in appeals. "A parish is an *ecclesiastical division*, and though such may be a vill, it is not necessary ex vi termini that it should be so."—In *Goring v. Deering*, 3 Mod. 156, Hil. T. 3 Jas. II.

§ See Brady, p. 48.

Philip and Mary. 1553. 12 aldermen. 12 principal burgesses. politic, and a perpetual community, with the usual corporate powers. After which, the charter directs that 12 of the *inhabitants* should be aldermen, and 12 of the *inhabitants* principal burgesses; and that one of the aldermen should be annually elected bailiff. The first bailiff—the first 12 aldermen—and the first 12 principal burgesses—are then named, and are all described as “inhabitants.”

Common council. After which it is provided, that the bailiff, aldermen, and capital burgesses, should be the common council of the borough. And the queen further granted, in the last clause of the charter, that there should be in the borough, a burgess of Parliament: and that the bailiff, aldermen, and burgesses, of the borough and *parish*, should elect one discreet man, a burgess of the said borough, to be the burgess of Parliament for the borough; and to be at the costs and charges of the borough, parish, and community; and to be sent to the Parliament in the same manner and form as is used in the other boroughs of the kingdom.

One member. Brady. An extract from this charter is given by Dr. Brady in his History of Boroughs;* which is accurate in many respects—but in one or two material parts, which could hardly have been unknown to the author, is strikingly inaccurate.

For instance, Dr. Brady says, that this charter directs that *only* the bailiff, aldermen, and burgesses, should choose the member for Parliament; and introduces the word “only” in a different type, for the purpose of marking the importance of it. But in the charter there is no such word; the clause relative to the election of the member of Parliament merely directs, that it shall be “by the said bailiff, aldermen, and burgesses.” Burgesses and capital burgesses had both been mentioned before in the charter:—and so far from this clause confining the election to the 12 burgesses, (which is Dr. Brady’s construction,) by any express words, such as “*tantum*,” to be met with in some charters; this clause, compared with the rest, would lead to the conclusion, that its fair construction would be to include all the burgesses at large, and not only the 12, who are before called “capital bur-

* Brady, p. 48.

gesses." And by the return to Parliament of the fifth of Elizabeth, which is the earliest now in existence, the election was not confined to the body consisting of the bailiff, 12 aldermen, and 12 capital burgesses alone; but it was made expressly by the whole commonalty of the town, as well of the community, as of the corporation. Consequently, so far from the community or commonalty being, as Dr. Brady contends, the same as the corporation, and confined to that body, the commonalty of the town is contra-distinguished from the corporation in this return; and it is clear, that *the whole commonalty of the town, as well as of the corporation, joined in it.* In that part of the clause, which describes the person to be elected, Dr. Brady has omitted the important word, "burgess:"—the charter requiring that the member should be "a discreet man, a burgess of the borough:" but this author has only the words, a discreet man of the borough. Now, as his whole argument is, that the word "burgess," in this clause, means only the "capital burgesses," he could not have failed to have seen the importance of the word which he has omitted—for if it means in the other part of the clause capital burgess, it must also mean so here; and then the clause requires that the member should be a capital burgess, which the Doctor must have known never was the case. It seems, therefore, difficult to excuse him from a purposed omission of this important word, which, when restored, affords so strong an inference against his hypothesis.

The fact is, that the charters of the crown can not be allowed to affect the right of election,* without leaving the House of Commons altogether in the power of the crown. And considering also, the return of the fifth of Elizabeth, which is made "by the whole commonalty of the town, as well as of the corporation," the latter being in fact, as *inhabitants*, part of the former, although they were also corporators, it seems impossible that such a return could have been made according to the charter, at least, according to the construction put upon it by Dr. Brady, but it must have

Charters
of the
Crown.

* Et vide Chippenham Case, Glan. p. 47.

Philip and Mary. been according to the common law, "by the whole common-
 1563. alty of the inhabitants,"—and which, for the reasons we have given before, is according to the construction of which the charter is capable, and for the reasons given in Glanville, if capable of such a construction, it ought to be so taken.

However, in point of fact, Banbury does not appear to have returned any member to the first parliament of Queen Mary, which met on the 5th of October.

1554. To the next Parliament, which met in the April following, Mr. Denton was returned for it—and again to another Parliament, in November in the same year.

1555. In the second and third of Philip and Mary, no member was sent—but in the fourth and fifth, Mr. John Denton sate.

Notwithstanding the obvious construction of the charter, supported as it is by the principles laid down by the celebrated committee in the reign of James I., a committee of the House of Commons, in the third year of the reign of William III., upon the question coming before them, whether
 1691. the right of election was in the mayor, aldermen, and capital burgesses, or in the burgesses at large,—decided, "that it
 Right. "was in the mayor, aldermen, and capital burgesses *only*."

From the report in the Journal, it appears that this question was stated to arise from some doubtful words in the charter; but we have already shown that the words are not doubtful in themselves: and that there is no difficulty in putting a legal construction upon them. Moreover similar
 Abingdon. words in the charter of *Abingdon* were, even at the time of
 1660. the restoration of Charles II., held to extend to all the *inhabitant householders*.

And this perversion of the charter of Banbury was in the face of the returns, in the time of Queen Elizabeth, which were given in evidence before the committee. Nor did it appear that there was any return by the mayor, aldermen, and capital burgesses only, till the 13th of Charles II.—the parol testimony not extending farther back than that period.

The consequence of this decision as to Banbury, was the same as we before noted with respect to Buckingham. It necessarily involved the question of the return of members of

Parliament for this place, in all the intricacies of corporation law—and accordingly we find, in the close of the reign of William III., the committee of the House of Commons engaged in considering a corporate question, arising out of there being two contending mayors. And a subsequent charter of the sixth of James I., regulating the election of mayor, was given in evidence before them, as well as certain bye-laws made by the corporation with reference to his election. These inquiries necessarily embarked the committees in considering points upon which the courts of common law have at least a concurrent jurisdiction with them; notwithstanding the express declaration of the House of Commons to the contrary, in the celebrated case of *Ashby and White*.

Philip and
Mary.

1700.

It is impossible to account for this decision in the case of Banbury, were it not that Dr. Brady wrote his book about this time, in which he perverted the language of the charter, chiefly for the purpose of asserting the rights of the select body—and suppressed altogether the fact of the previous decision of the House of Commons, in favour of the inhabitants of Abingdon, where the words of the charter are the same as that of Banbury.

We have already seen, that although a place once incorporated should lose all its corporate privileges, yet it might return its members under the common law—as in the cases of Aylesbury and Taunton.

Aylesbury.
Taunton.

TORRINGTON.

The next place in the list of charters in this reign is *Torrington*, which affords the striking instance of a place being a borough, returning members to Parliament, the mayor, aldermen, and burgesses, being incorporated by Queen Mary, whose charter was confirmed by James I.; and yet it has since altogether ceased to return members:—although it continues to maintain its local and municipal government and corporate officers.

LAUNCESTON.

A charter of Queen Mary recites, that the borough of *Launceston* having been by ancient kings endowed with

1555.

Philip and Mary. many privileges and great immunities; and anciently governed by a mayor, &c., (which officer it had in the time of Henry IV.) ordains, that it should be *incorporated* by the name of "mayor, aldermen, and commonalty of the borough of Dunheved, alias Launceston," and by that name should have perpetual succession; and be enabled in law to purchase lands, &c., and to plead and be impleaded, &c.

Incorporated.

That the mayor and aldermen should have a *common seal* for their affairs; and that the borough and corporation should consist of eight aldermen besides the mayor, who should yearly be chosen on the nativity of our lady; which said mayor and aldermen should be called the common council, and have power to elect a recorder—who with the mayor should be justices of the peace within the borough.

Common council.

HIGHAM FERRERS.

The second place to which Queen Mary granted the privilege of sending one member to Parliament was *Higham Ferrers*,* which she incorporated in the second and third year of her reign, and made it a borough; the corporation consisting of a mayor, seven aldermen, and 13 burgesses.

1554-5.

1684. This charter was subsequently confirmed in the 36th year of Charles II.

This borough had previously been in the hands of the crown.

1660. Immediately after the restoration of Charles II., the right of election was disputed upon a double return, and the question was, whether it was in the select number of burgesses,

Right.

Burgesses. or in the burgesses at large.—The committee decided that the right was in the latter.

A decision, which forms a striking contrast to that of Banbury, where the words of the charter were similar, if they had not been perverted by Dr. Brady.

1702. In 1702, the same question came again before the House of Commons, when the petitioner insisted that the right was in the mayor, aldermen, and burgesses at large, and in the *freemen residing* within the borough.

* See Brady, p. 50.

The sitting member, on the other hand insisted, that the freemen ought to be *householders*. Philip and Mary.

Usage was proved by the petitioners, for 20, 30, 50, and 60 years, during which, it was said, freemen had voted who were not freeholders; and some had voted as freeholders who were not householders.

On the other hand, the counsel for the sitting member gave evidence, that the usage was otherwise; and relied upon the resolution of 1660. And they called witnesses to prove the usage for 11, 40, 50, and 60 years, that the *householders paying scot and lot*, were the persons entitled to vote, and that no freeman had been permitted to give his vote, though they had sometimes claimed. And they read the charter of Philip and Mary, wherein they are styled, "the mayor, burgesses and commonalty:"—the corporation being appointed to consist of a mayor, seven aldermen, and 13 burgesses. Householders.
Scot and lot.

The committee resolved, (in accordance with the common law,) that "the right was in the mayor, aldermen, burgesses, and freemen, being *householders*." Right.

The variety of these decisions, upon the same words in the kings' charters, founded upon the particular *usage* of each place, must carry conviction to the mind of every dispassionate reader, of the impropriety of giving effect to the usages of different places; which can have no other tendency than that of introducing anomalies and endless intricacy; at the same time that it gives the fullest opportunity for abuses, by establishing a varying, instead of a certain rule, by which all abuse might be prevented. Usage.

The sound principle of English law is—"malus usus abolerendus,"* which alone can prevent or correct abuses; and Lord Coke properly adds in his Commentary, ~~as to the time they may have perverted this reason, "quia"~~ in consuetudinibus non diuturnitas temporis, sed soliditas rationis est consideranda." 1570.

And how illegal customs were dealt with by the law may

* Littleton, sec. 212.

Philip and
Mary.

be collected from Plowden,* where it is said, that if a town has customs which are against law or reason, and no other customs, and their customs are confirmed by Parliament in such case, Danby, chief justice (in Long, 4th Edward IV.) says, "that such confirmation shall not extend to those customs; *for a thing used merely contrary to law and reason is no custom, notwithstanding the usage.* And, therefore, the act of Parliament which confirms their customs, is referred to that which is not—for they have no customs, for which reason they shall be void."

NEWCASTLE-UPON-TYNE.

1553.

This queen also, in the first year of her reign, by a charter of inspeximus, dated 15th of November, confirmed to the society of merchant adventurers of *Newcastle-upon-Tyne*, the charter of her late royal brother; but without the addition of any new privileges.† The confirmation, however, being to
inhabiting. the merchant adventurers *inhabiting* within the town.

Appren-
tices.

A bye-law was likewise made at a court held in this year which recites, that divers brethren of the fellowship, had taken *apprentices*, bound by indenture, some for seven,‡ others for eight years; by reason of the shortness of the which apprenticeship, the number of the fellowship was so augmented, and daily would increase, that if speedy remedy in that case were not provided, it would be the utter destruction of the fellowship; for reformation whereof, it was agreed by the governor, assistants, wardens, and the whole fellowship, that from thenceforth no brother *free* should take any *apprentice* to serve for less time than for 10 years. And that from thenceforth no brother should take any apprentice before he was 16 years old at the least; upon pain, that any which should do the contrary, should forfeit to the use of the fellowship, the sum of 20*l.*; and the apprentice should lose all the time he had served.

* Plowden, 399. So also Keilw. 142 a, per Scrope. Litt. R. 283, Hardr. 41; 2 Sid. 120; Co. Litt. 295 b; Dy. 263, pl. 37; Cowel's Inst. 6.

† 2 Brand's Hist. Newcastle, app. 655.

‡ 4 Philip and Mary, it was directed by a bye-law made at Chester, that none should be taken as apprentices under the term of seven years.

AXBRIDGE.

It may also be desirable to mention, although it is not now a parliamentary borough, that Queen Mary granted, in the third and fourth years of her reign, a charter of *incorporation* to *Axbridge*,* which recites, that the borough was an ancient borough, always consisting of 32 burgesses, (which is highly improbable) from whom, have been always chosen 14 aldermen, and of them one reeve or provost, called "the portreeve," and out of the 32, a bailiff, and two constables, and other officers. By which reeve, bailiff, constables, and other officers, the borough had been immediately governed. That the burgesses and *inhabitants* had immemorially enjoyed divers jurisdictions, liberties, and franchises; paying an annual fee-farm of 60s. 2½d.: which borough and fee-farm had come to the hands of the crown. And that the burgesses and *inhabitants*, not being incorporated, could not govern the borough as was meet. They, therefore, beseech the king and queen to incorporate them accordingly: and the king and queen granted, that the borough and town should be a free borough *corporate*: to consist of one mayor and 32 burgesses: who should be able to purchase and hold lands, &c., in fee: and plead, and be impleaded: and that they might have a common seal. The precincts, jurisdiction, and bounds of the borough, are directed to extend in like manner as theretofore, from time immemorial: the mayor and burgesses having power to make perambulations thereof, at their pleasure. That 32 of the most discreet inhabitants should be called the burgesses; of whom fourteen should be called the aldermen: who should yearly elect, out of themselves, one mayor, one bailiff, and two constables, and other officers, for the governance of the borough, as theretofore. That the mayor and burgesses should be *quit of suits of counties and hundreds*, and aids of sheriffs: also of all passage, pontage, stallage, lastage, and hundreds.

* Axbridge sent members to Parliament in the 23d of Edward I., and during the reign of Edward II., but was excused from so doing in the 17th of Edward III., upon the petition of the burgesses.

Philip and Mary. toll, throughout England. That no sheriff, under-sheriff, &c., should intermeddle in the borough. And the charter concludes with the ordinary provision, that the mayor and burgesses, and the *inhabitants* of the borough, should have and enjoy all their liberties, customs, &c., as theretofore : whether by prescription or charter.

ABINGDON.

1555-6. Another charter by Queen Mary, giving the power of returning one member to Parliament, was granted in the third and fourth year of her reign to *Abingdon*,* and was nearly in the same words as those of Banbury and Higham Ferrers.

1660. The right of election was, like Higham Ferrers, discussed immediately after the Restoration. There was no question, as in Banbury, whether the word burgesses, in the parliamentary clause, meant only the capital burgesses ; but the only point was, whether it extended to *all the inhabitants*, and the committee were of opinion that it did.

1689. At the period of the Revolution, the subject again came under discussion, and it was then admitted, on all sides, that the right was in the *inhabitant householders paying scot and lot*, and in taking the scrutiny of the votes, persons were objected to as not being housekeepers—as living in parts of houses—as lodgers—as servants—as living with their parents—as not being inhabitants—and some as being foreigners.

1698. Ten years afterwards, the same right of election was again assumed upon a petition, and a similar inquiry was instituted as to the above objections to voters. And the right was again admitted in 1708, to be in the *inhabitants paying scot and lot*.

Thus we see, that upon three charters, nearly in the same words, there have been these three decisions. Two of them, strange as it may appear, at the unfavourable period of the Restoration, determined, according to the common law, to be in the *inhabitant householders paying scot and lot*. The

* See Brady, p. 51.

third at the period of the Revolution, in defiance of the common law, and of the two former decisions, and against the plain construction of the charter, to be in the *select body of the corporate officers*. But this, it must be remembered, was effected by Dr. Brady's book, published in the year in which the decision took place, and in which he suppresses the facts of two former decisions; with one of which it is hardly possible he could have been unacquainted, as it immediately preceded his publication, and probably took place at the time when he was collecting his materials. Notwithstanding that decision and the plain words of the charter, Dr. Brady has the boldness to assert, after speaking of the principal burgesses, that the corporation *only* had the grant to choose the burgess to Parliament.

Philip and
Mary.

HINDON.

In the seventh and eighth year, the last of the reign of Philip and Mary, a charter was granted to the borough of *Hindon*, providing that there should be one chaplain to celebrate service in the chapel there. That eight men of discretion, *burgesses and inhabitants* of Hindon, should be the governors of the goods and possessions of the chapel, commonly called the free chapel of Hindon, within the parish of East Knoyle.

Inhabitants

That certain persons named, then *inhabitants* of the town or borough, should be the first governors for their lives. That they should be a body *corporate* and politic, with a corporate name, and the usual corporate powers. And it was provided, that if any governor should die, *or go out of the borough, and with their families from the said borough depart*, the residue of the governors surviving, and then and there *abiding* with their families, or the major part of them, any other person, *inhabitant* of the borough, in the place of him so dying, or *with their family departing*, into the office of governor should elect. There then follows a grant of the chapel, the chapel yard, and a tenement and garden belonging to the chapel, with other property, including two shambles in the market-place.

Philip and
Mary.

1383.

1448.

Hindon had before this, sent members to Parliament ; it had a precept directed to it, but made no return in the 7th year of Richard II., but it returned in the 27th year of Henry VI., and has continued to do so ever since.

The parliamentary history of this borough is singular; and affords an instance of the difficulties which arise in all these questions, when the simplicity of the common law is departed from: and those principles are disregarded, which afford the proper clue to solve every difficulty.

1660.

The burgesses of Hindon had never been incorporated. Upon the Restoration the question was, whether the "*freemen*" in general ought to elect, or such only as paid scot and lot. Here it is obvious that the word *freemen* meant the *liberi homines* of the common law, and not any members of a corporation, for none such existed in the borough. The committee erroneously decided that the *freemen* in general ought to elect:—thus negating the payment of *scot and lot* as a qualification; and saying nothing as to the *inhabitan- tancy* or *resiancy*; nor as to the *swearing* and *enrolling* at the court leet. And although this determination must have had the effect of extending the right of election, yet it was equally erroneous, and as much opposed to the principles of the common law, as those which restricted the right to the select bodies.

Right.

1701.

However, it will be seen that the parties afterwards abandoned the general term of "*freemen*" as descriptive of the voters; and at the close of the reign of William III., upon a petition being presented, the question was, "whether the bailiff, burgesses, or such inhabitants only who paid scot and lot had the right of election; or whether it was in the inhabitants generally." The latter was insisted upon by the sitting member; the former by the petitioner, whose counsel properly urged that the law excluded those from voting who were not contributory to the common charge of the borough.

Prescrip-
tion.

The sitting member on the other hand contended, that Hindon was a borough by prescription:—which does not appear to be true, for it is not so mentioned in Domesday,

nor do we find any charter granted to it until the reign of Philip and Mary. Henry III.,* when there is a mere confirmation to the *inhabitants* of exemption from tolls. 1701.

It was also argued, that “burgesses” and “inhabitants” were synonymous terms:—which is only correct in part; because, although a *burgess* must be an *inhabitant*, yet, by the common law, he must also have other qualifications. Inhabitants

It was also added, that the inhabitants had a natural right, unless usage could be shown to the contrary. What their *natural* right could be, seems altogether unintelligible. That they had no right under the common law, unless they had the other requisite qualifications, is most clear.

And usage of forty years only was set up to support their right; but the committee properly decided, that it was in “the bailiff, burgesses, and such inhabitants only who paid *scot and lot*.” Which finding, in its legal effect, included *resiancy*; because otherwise they could not perform *lot*;—and housekeeping; because otherwise they could not be *resiant*;—in which character they would be suitors at the court leet,† (where the bailiff of the borough is appointed,) and where they would be regularly *sworn* and *enrolled*, and complete all the qualifications required of them by the common law. Right. Inhabitants Scot and lot. Sworn. Enrolled.

The petition being recommitted, the petitioners alleged the right to be in the *burgators* who held under the *tenement*, the Bishop of Winchester; and returns were given in evidence to support that right; as well as parol hearsay evidence. But the practice actually proved was in favour of the inhabitants paying *scot and lot*; for whose right the sitting member contended; alleging, with truth, subject only to the qualification we have before given, that the *burgators* (meaning, no doubt, the householders,)—the *burgesses*—and the *inhabitants* of a borough—were synonymous terms. He also produced returns to establish his case. The committee resolved generally, that the right was in the *inhabitants*. Upon Right. Inhabitants Burgators.

* Vide ante, p. 438.

† The *sheriff's tourn* was also in practice in this reign, as appears in the case of Crocker v. Dormer, Poph. 28, where it is shown, that the sheriff's office was seized into the king's hands, for holding his *tourn* in an unaccustomed place.

Philip and Mary. which the inquiry was gone into as to who were house-keepers—part occupiers—or traders—or inmates. As to one, it was stated, that he did all the duties (by no means an inappropriate explanation of lot); and as to another, it was proved that he had borne an office. And upon these inquiries the election was determined.

Right. About 26 years afterwards, the right was again in question; but the committee determined, though not in the same words, yet in the same spirit as the former decisions, that the right was “in the *inhabitants* of houses within the borough, being *housekeepers*.” In conformity with which the right was ever afterwards exercised by *inhabitants paying scot and lot*.

CHIPPING WYCOMBE.

1557-8. The last place to which a charter was given in this reign was *Chipping Wycombe*, which received a grant in the 5th & 6th of Philip and Mary.

We have before seen,* that this place was not a borough at the time of the compilation of Domesday; and it probably was not a borough by prescription, as it was an ecclesiastical possession.† But in the time of Henry III., the burgesses are mentioned. And in the reign of Edward I. it was in the hands of the crown: but returned members at that period; and also in the reigns of Edward II. and Edward III.

It is said to have been first incorporated by Edward IV.; but we have not been able to find a charter of incorporation of that date. However, the members in that reign were returned by 12 persons, who, according to the observations we have before made, were, no doubt, the *jury* for the time being.

In the reign of Edward VI., the return was by the mayor and burgesses.

1673. In the reign of Charles II., a petition was presented by certain burgesses, freemen and *inhabitants* of the borough, complaining that the election had been made contrary to the rights and custom, and in infringement of the liberties of the borough.

* Vide ante, 201.

† Vide ante, 465.

In the commencement of the reign of Queen Anne, another discussion arose as to the right of election for this borough; and it was agreed to be in the mayor, bailiffs, aldermen and burgesses. Which was followed by a question as to the legal mode of making the burgesses: it being contended, on the one hand, that they ought to be made by the majority of the burgesses at large; and on the other hand, that they should be made by a majority of 15: but it does not distinctly appear in what manner that question was decided.

Philip and Mary.

1702.

On a subsequent occasion, a further inquiry as to the making burgesses being instituted, it appeared that *an erasure* had been made in the entry of them; and it was resolved that certain persons "had no pretence to be burgesses, but under a charter of James II., which was never accepted or enrolled; and therefore that they had no right to vote."

1725.

Resolution.

James II.

From this it will be seen, that by connecting the right of election with the corporation—instead of allowing it to be decided by the principles of the common law, as we have explained before—the parliamentary elections have been involved in all the intricacies of corporation law—which has led, in the course of the last few years,* to embarrassing inquiries, appearing in succession to have baffled the wisdom of the courts of law, and even of the House of Lords—the court of dernier resort.

We have observed during this reign the more frequent introduction of the term "inhabitants,"—as well in the statutes as in the charters:—and have given the explanation of this change which history sanctions. The same expression occurs also in some of the returns of this period—nothing of the kind having been found in any former reign.† Thus the term "inhabitants" expressly occurs in three several returns for Ludlow, during the parliaments called and summoned by

Inhabitants

* *Rex v. Westwood*, Dowl. & Ry. vol. 7, p. 267; Barn. & Cress. vol. 4, p. 781; and Dom. Proc. 1830.

† In the first of Henry VII., a return is stated to be made "per majorem numerum gentium tunc residentium," see *Corbet v. Talbot*, Plow. 126; and *Rast. Ent.* 446; and *Buckley v. Rice Thomas*, Plow. 118; where the knight who was elected is described as "born" within the county.—*S. C. Dyer*, 113. pl. 57.

1485.

Philip and Mary. Philip and Mary; and no doubt there are many others, if time and opportunity sufficed for collecting them.

Another circumstance also occurred at this period, which should not be passed over in silence: particularly as it has since produced so much error by the mistatement and misapplication of the case we are about to quote.

Incorporation. The doctrine of incorporation appears to have been carried further in this reign than it had in any preceding—but by a court, whose decisions have never been regarded with much favour.

1553. It was holden for law in the Star Chamber, in the first year of Queen Mary, by Bromley, Chief Justice, Sir John Baker, and others—that “if the queen should at this day grant land by her charter to the *good men* of Islington, without saying—‘to have to them, their heirs and successors, rendering a rent’—this is a good corporation for ever, *to this intent alone*, and not to any other, because there is a rent reserved, &c. But then it seems they are only tenants at will: and if the queen release or grant to them the rent and fee-farm, it should seem the corporation is dissolved ipso facto; for the rent and fee-farm were the cause which enabled the corporation, &c. *ideo quære*.”*

The principle of this case is sufficiently obvious, and applied only to the extent to which the determination really goes—it is neither erroneous in itself, nor could it lead to error.

It in effect determines, that if the inhabitants of a place receive a grant of land from the king for which they are to pay rent, they shall not, after they have enjoyed the land, object that they are not liable to pay the rent, not being incorporated; but (as is stated in other books,) “rather than that the king should lose the rent, they shall be held to be incorporated—but to that extent and for that purpose only.”

This case, however, was afterwards frequently cited, for the purpose of showing that any grant of the king to the inhabitants of a place incorporated them—the latter qualification

* 1 Dyer, 100 a. 10 Co. 30 B. 44 Ed. III. 4 a. 3 Leon. 202.

of the doctrine being omitted. And text authors—as well as the abridgments—have also inserted the doctrine generally without the limitation. Indeed, it has been likewise carried to the further extent of being supposed an authority for assuming that the numerous charters of immunity, granted in the reigns of King John and his predecessors and successors, were charters of incorporation. Although the position contained in this case, and which in fact was only adopted as a necessary consequence, resulting from the general doctrines of corporation, was not laid down by the court till centuries after the granting of the charters, to which it has been so unjustifiably applied.

Philip and
Mary.
1553.

Notwithstanding the general adoption of the doctrine of incorporation in this reign, and the application of it to the early charters; still the following case will show, that in some instances they were merely treated as grants of franchises, and not of incorporations.

Thus in the first year of Queen Mary, in the King's Bench,* a juror was challenged by the defendants, because he had nothing within the hundred of Morden, nor had any servants, nor dwelt, at the time of arraying the panel, nor at any time afterwards, in the hundred. To which the plaintiff replied, that the juror at the time dwelt in the vill of *Wallingford*, in the county aforesaid, which is, and at the time was, within the hundred of Morden. To which the defendant rejoined, that the vill of *Wallingford* was, from time immemorial, a franchise, and wholly exempt from the same hundred; and that the *inhabitants* of the vill, and the *inhabitants* within the hundred, never united themselves, or met at any court, or were sworn upon any jury together. And upon this the plaintiff demurred in law, and the challenge was disallowed, and the juror sworn. And the opinion of Bromley, chief justice, was, because it was confessed that *Wallingford* was once within the hundred of Morden: if it had been exempted, since time of memory, it should be shown how, and by what means, wherefore, &c.

* 1 Dyer, 100 a.

Philip and
Mary.

IRELAND.

Dublin.
1533-4.

As to Ireland, we have only to note, that the charter of Edward VI. to *Dublin*,* was recited and confirmed by a grant of Philip and Mary in the second and third years of their reign :—the fee-farm was also released.

Waterford
1555.

And the mayor, bailiffs, citizen *inhabitants*, and commonalty of *Waterford*, received a confirmation of the charters of King John, Henry VI., Edward IV., Henry VII., Henry VIII., and Edward VI.†

CONCLUSION.

We have now concluded the important reign of Queen Mary ; in which, although many changes were not actually made, yet the foundation was laid, upon which, in the succeeding reigns, many extensive innovations were established. The only considerable alteration effected by Queen Mary, was the more general adoption of the term "*inhabitants*," and the creation of new parliamentary boroughs, with the right of returning *one* member only. In every other respect the municipal institutions continued as they were before :—and there is no ground whatever for assuming that the burgesses were not, during any part of this reign, as they ever had been, the *inhabitant householders paying scot and lot*, and *sworn and enrolled at the court leet*.

 ELIZABETH.

1558
to
1603.

The reign of Queen Elizabeth—so long in its continuance, and, in its course and consequences, so glorious to the country in general—is also an important æra in the progress of the subject of our inquiry.

The queen had found the necessity of securing her as-

* Pat. 10.

† Rot. Conf. 2 & 3 Philip & Mary, n. 11.

cendancy in the House of Commons; and as the best means of effecting that object, had discovered the expediency of obtaining an influence over the boroughs.

Elizabeth.

Boroughs.

The establishment of the corporations, with their governing bodies, afforded her an opportunity of attaining this end: and therefore we find those institutions, which had been produced by other causes, and were intended for different purposes, during this reign applied to incline the boroughs to support the views of the crown.

Corporations.

Hume appears to have been of opinion, that the prerogative was in itself so powerful, that no other aid was necessary to establish the influence of the crown. But it must at the same time be remembered, that the House of Commons asserted its right to institute all the bills for the supplies; and besides there was, between them and the queen, great differences upon points of religion and ecclesiastical affairs—the latter prohibiting all interference by the House on those points; and the House and the country, on the other hand, being most anxious to have those matters established on certain and secure grounds.

Prerogative.

House of Commons.

However, it must be admitted, that even these positions may be considered points of historical doubt. But there is one fact which is decisive to show the interference of the crown in this respect—namely, that shortly after the commencement of this reign, some ancient boroughs, which had either long intermitted sending members to Parliament, or had never previously done so, were required to send their representatives—in conformity, as it would seem, with the practice which was suggested and partially adopted in the reign of Henry VIII.

Boroughs restored.

This point we shall more minutely consider hereafter. In the meantime it is necessary to observe, that the changes introduced by Queen Elizabeth were not effected hastily, but, in the spirit of the policy of her government, advanced by slow degrees. Thus it becomes necessary to trace the successive course of events during this reign; and departing from our previous mode of arrangement, of giving successively the statutes, charters, and legal authorities, occurring

Changes.

Chronological order

Elizabeth. in the period, we shall, in this instance, refer to all the facts as they arose in point of time.

1558. The Legislature, during the first year of this reign, was
 Crown. principally engaged in restoring to the crown the ancient jurisdiction in ecclesiastical and spiritual matters—annulling the power of the Pope in these dominions—restoring the Common Prayer and the service of the church, with the administration of the sacraments—the recognition of the queen's title to the crown—the restitution of the first fruits—the protection of the queen from treason and from slanderous reports—and the efforts of unlawful and rebellious
 Subsidies. assemblies:—and a subsidy of tonnage and poundage was granted for her life, as well as two fifteenths and a tenth. Authority was likewise given to the queen, to make ordinaries for collegiate churches and schools.

The statutes of this year, speak of cities, boroughs, and towns *corporate* and make provisions with respect to the *inhabitants* and *dwellers* in different parts of the country—and for offences to be presented before the *steward* at the *leet*; as we have seen in the last preceding reigns.

It does not appear that Queen Elizabeth, at the beginning of her reign, made any essential alteration in the charters; but confined her interference chiefly to the confirmation of the former grants;* thus she inspects and confirms all
 Charters. the former charters of Huntingdon, Bristol,† Poole, and Marlborough.

1560. In the case of Willion v. Berkley,‡ in the third year of Queen Elizabeth, it was said, that there are distinctions in
 Corporations. bodies politic—that is to say, between those which are made by the king's letters patent, and those which exist in common law. For those which are made by the king's letters patent—as dean and chapter—mayor—and such like—cannot
 Heirs. purchase in succession by the name of “heirs,” but only by
 Successors the name of “successors.”

* But see post., p. 1228, Minehead charter.

1598. † Entries of the elections of the mayors of Bristol are extant from the 40th of Elizabeth, and they are all by the common council.

‡ Plow. 242.

The reader will remember the observations which have been made upon the charters of King John,* of which this decision is a striking confirmation. Elizabeth.

And that the courts leet were in full practice at this time, is established by two decisions in the next year,† by which it was determined, that if the jury at the court leet refuse to make presentment, according to the articles of the leet, to present which they are sworn, the steward may set a fine upon them for the concealment and the contempt. 1561. Leet. Steward. Fines.

No other material documents or authorities occur till the fifth year of this reign—when after an interval of four years, another Parliament was held; and the interference of the queen, in summoning new places began to be exercised. 1563. Parliament.

In the Lansdowne MSS., amongst the Cecil Papers, the following extraordinary letter is found, dated in the same year, to which the reader must give such explanation as he may think fit; but a suggestion may be hazarded, that it was written to conceal the real wishes of the queen, as her conduct was so much at variance with the import of it. For no sovereign of these realms ever granted so many charters of incorporation as Queen Elizabeth; and in many instances, although the places to which the charters were granted had never been incorporated before, they were, nevertheless, in the recitals; declared to have been “immemorially incorporated:”—a fact decisive to show that the queen was not so opposed to incorporations, as this letter would seem to import. Corporations.

“I have, with much argument, obtained of the queen’s highness to sign the book for the *inhabitants* of *Poole*:—and notwithstanding that I told her, as truth was, that they had been long suitors—that they desired no new grant, but *confirmation* of the old—that their counsellors were agreeable, and that the attorneys had orderly proceeded in the same—yet *the name of incorporation is so discredited with her*,‡ that she told me plainly, she signed the book for no Poole. 1563.

* See before, p. 422.

† 2 Dyer, 211 b.

‡ See also post., MSS. in the possession of Lord Kingsborough, relative to Ireland.

Elizabeth. liking of the matter, but only because they had been long suitors, and to save my reputation, (as she termed it,) in that I had given them hope. Therefore I crave of you, seeing the matter is so far on, and as I take it by very good reasonable means, [that it may please you to pass it favorable, except you shall find some substantial cause to the contrary, as I trust you shall not. I have stayed this matter upon my Lord Montjoie's importune requests this 10 or 12 weeks; and in the end, he saith nothing that is material: and the town will be bound as high as himself can devise, that their grant shall no ways prejudice his right. He stirreth in this matter by indirect means; and hath done sic, quod indignum est ejus religione et personâ:—sed hæc tibi in aurem. I pray you give your lawful assistance; and as I promised the queen's highness, so I will promise you, *it shall be the last incorporation that ever I will deal with at all*, except I be specially commanded," &c.*

Journals. The records of Parliament up to this period are very imperfect; and contain but little matter to illustrate the history of boroughs.

The Journals commence only in the reign of Edward VI., during which and the succeeding reign of Queen Mary, there are merely a few short minutes extracted from the book of the then clerk of the House, which, from his name, is called Seymour. "Seymour."

The question in the reign of Edward VI., as to the right of Maidstone. *Maidstone* to return members to Parliament, we have already noted.†

In the reign of Queen Mary, the seat of the member for West Looe. *West Looe* was vacated on account of his being a *prebendary* of Westminster, having as such a voice in *convocation*, and therefore not capable of being a member of the House of Commons.

* Cecil Papers, MSS. Lands. No. 7, p. 23.

† See before, p. 1162.

At the beginning of the reign of Queen Elizabeth, Sir ^{Elizabeth.} Sir Simon D'Ewes' Journal gives us a somewhat more perfect account of the proceedings in Parliament. And in that collection we find it reported to the House of Commons, in the same year as the above letter to Poole, that burgesses ^{1562.} had been returned of divers boroughs which had not lately returned members to Parliament; *Tregony*, *St. Jermynes*, ^{Tregony. St. Jermynes.} and *St. Mawes*, in Cornwall; *Minehead*, in Somersetshire; ^{St. Mawes. Minehead.} *Tamworth*, in Staffordshire; and *Stockbridge*, in South- ^{Tamworth. Stock-bridge.} ampton. The speaker declared to the House, that the *lord steward* agreed that the members should resort to the House, and with convenient speed, show *letters patent* why they were returned to Parliament.

Here the short minute of the proceeding ends. And it would appear from it, that the question was put upon the ground of these boroughs not having charters to show for their returning members. If their representatives were allowed to sit in consequence of their having charters, it certainly was a strong assertion on the part of the queen, and an admission on the part of the House, that the crown had power to grant such charters. It was, however, afterwards but rarely exercised, was resisted in the case of Newark in the reign of Charles II., and has never since been insisted upon.

Indeed it will be seen, that although Queen Elizabeth purported by her charter to incorporate some of these places, she did not profess to give them any right of returning members.

Sir Simon D'Ewes puts the question upon much sounder ^{P. 80.} and more constitutional grounds. He treats these places as having anciently been boroughs,—but by their poverty, having neglected to return members to Parliament, when they were paid wages by their constituents, they for a time lost the right of returning members. But when the payment of wages was discontinued, he says, many boroughs, both in the reign of Queen Elizabeth, and that of her successor, King James, returned members, which had not returned in the preceding Parliaments.

Elizabeth.

This is the same sound and constitutional doctrine so distinctly laid down by the committee in the 21st of James I., in the principle they established, that "the right of a borough to return members having once existed, can never be lost." However, that same committee, in its determinations, totally disregarded the charters of Queen Mary, thereby negating the right of the crown to interfere by its charters with the right of returning members. The words of Sir Simon D'Ewes are, that "it was very common and ordinary in former times to avoid the charges of their burgesses' allowance in time of Parliament (when the town grew into any poverty or decay); that the boroughs did either get license of the sovereign for the time being, to be discharged from such election, and attendance, or did by degrees *discontinue* it themselves; but of later times the knights, citizens and burgesses of the House of Commons, *for the most part bearing their own charges*, many of those borough-towns, who had discontinued their former privilege, by not sending, did again recontinue it (as these towns here) both during her majesty's reign, and afterwards in the reign of King James her successor."

These observations are in substance correct as to the facts; but manifestly erroneous as to the constitutional principles upon which they appear to have been founded.

Boroughs
discontinued.

It is certainly true that many places, originally returning members to Parliament, discontinued sending representatives when they fell into poverty or decay; upon the ground we have stated before, of their ceasing to keep up the exercise of their exclusive jurisdiction; by which they, in fact, ceased to be boroughs, separate and distinct from the jurisdiction of the sheriff, and were absorbed again into the counties.

King's li-
cense.

It is further stated in these observations, that "boroughs, in order to avoid the charges of their burgesses' allowance in Parliament, obtained a license from the king to be discharged from the election and attendance." This is also true: but those licenses, in point of fact, were not acted upon; as the places obtaining them notwithstanding sent

their members ; whilst on the other hand, places which had Elizabeth. ceased to be boroughs by falling into decay, altogether discontinued sending members.

Both of these circumstances were consistent with the true principles of the constitution.

The latter we have before explained. As to the former, the licenses were inoperative, because it is clear that the king had no power to discharge any place from returning members as long as it continued a borough. The crown had the undoubted prerogative of directing within what districts the law should be administered, whether of the county at large, or of any particular franchise, as a city or borough : —but when the king made any place a borough, all the legal consequences followed as a necessary result of law ; and amongst others, that it should, in conformity with the writ, be called upon by the sheriff's precept to return members to Parliament ; by which means the burgesses of the borough were consequentially exempted from contributing to the wages of the knights of the shire. But the king could not exempt them from both. They must contribute to the one or the other. And therefore, if the burgesses, by reason of the place being a borough, were exempt from contributing to the wages of the knights, the king could not direct that they should not send, nor pay, their members whilst it continued a borough : —if he, or the burgesses, wished that they should get rid of that liability, then the place must cease altogether to be a borough, and as a consequence, become contributory to the knights of the shire.

The other assertion in this note, that the members had Member's wages. begun to pay their own charges, is also no doubt correct : — and it is the strongest proof to establish, that the being returned a member to the House, had then, in public estimation, lost its character of being a burden, and had become an object of desire ; — which would hardly have been the case, if the House had continued to be in the same state of subserviency to the crown in which it had been in the former reigns. But the truth is, that the House of

Elizabeth. Commons had begun to feel its power and importance; which generated on the one hand a desire in persons of station and property to obtain seats in it; and on the other, a necessity in the crown to put some species of restraint upon the increasing and ill-regulated power of the people.

Our constitution had not then made such advances towards perfection, that it could venture to adopt the most direct and sound methods of controlling the people; which every government, in order to effect its purpose of *governing*, must, in some manner or other, possess.

Instead, therefore, of restoring and enforcing the olden system of our ancestors, which would have established the government on secure grounds, the project was unfortunately adopted, of moulding the institutions, which then existed, in such a manner as to make them indirectly serve the purpose of government:—a bad expedient for doing that which was undoubtedly necessary, but which might have been effected in so much more desirable a manner.

But to proceed with the consideration of the real history of these places, the returns for which were the subject of investigation before Parliament.

Tregony. Dr. Willis says, that *Tregony* had returned members to Parliament in the 23rd and 25th of Edward I.; but Prynne makes no mention of those returns. The assertion as to the first cannot be correct; for no general returns were made at that time; and the statement as to the second, is, in all probability, also incorrect. It seems, therefore, the sounder opinion to infer, that this borough returned members, for the first time, at this period; and that it was not incorporated until the 19th of James I.

Incorporated.

1695.
Right.

In the seventh year of William III., the right of election was agreed to be in the *inhabitants*: with one of those absurd additional qualifications that have led to so much intricacy in questions connected with the right of parliamentary election. It was said that the electors were “*such inhabitants as provided for themselves, whether they lived under one roof or not.*” This has given birth to that insen-

sible description of voters by the term of "potwallers," of Elizabeth. which there are only three instances in England,—Honiton—Potwallers. Taunton—and this place: in all of which the determinations in favour of this right can clearly be traced to their mistaken and erroneous source.

In this instance, the evidence chiefly related to the question of whether those who joined in the election were *house-keepers* or not; as contradistinguished from lodgers and boarders:—and two instances are mentioned, one of "a person who lay in a hog-sty"—and another of a man "who worked in a chamber which had no chimney, and had "neither pot nor bed." It was properly contended on the other hand, that the right was in *the inhabitants paying scot and lot*, which would have been both reasonable and constitutional. Whereas the decision in truth, converted into a right of election, one fact which only tended to prove permanent inhabitancy.

The consequence of which has been, that in this place, as well as in Honiton and Taunton, the most ridiculous as well as fraudulent expedients were resorted to, in order to increase the number of voters, by getting every individual at the place to "*boil a pot*;" of which fact the most disgustingly contradictory evidence was given in confirmation and denial.

The next place, with respect to which the House of Commons decided, was *St. Germain's*, which like Tregony had not before returned members to Parliament: and it does not appear ever to have been incorporated, neither is there any decision as to its right of election, which was exercised by the *inhabitant householders*. St. Germain's.

The third place is *St. Mawes*, which had likewise never St. Mawes. before sent members, nor had it any corporation: but like *St. Germain's* was under a *portreeve*, occasionally called mayor. The right of election, in consequence of the court baron having been held, and confounded with the court leet, was exercised by the *resident free tenants sworn* at that court.

Elizabeth. This was, in fact, according to the particular abuse in that place, a slight perversion only of the common law right of the *inhabitant householders*. But there are also traces of usurpations having been attempted in this borough of a corporate character, by the arbitrary and irregular admission of *freemen*—even after the date of the writ—for the purpose of controlling the election.

Minehead. The fourth is *Minehead*, which likewise never was incorporated till the first year of this reign,* by a charter which commences with a recital that it was an ancient town, and that the *inhabitants* had petitioned that the town and themselves should be one body corporate and politic, of one reeve, called “a portreeve,” and burgesses.

The queen, therefore, for the amelioration of the town and *inhabitants*,† granted that the town of Minehead should be a *free borough incorporate* in deed and name, of one reeve, called a “*portreeve*,” and burgesses; by the name of “reeve and burgesses of the borough of Minehead.”

The usual corporate powers are then given.

Bye-laws. And that the reeve and burgesses should for ever have the power of enacting laws and ordinances for the government of the borough.

12 Men. That there should be twelve *men* of the most discreet and worthy *men* of the borough, who should be *assistants* to the reeve for the time being, and should be called the principal burgesses, and compose the common council.

The first reeve is then named and appointed, who is *inhabitants* described as one of the most worthy men and *inhabitants*, and the twelve principal burgesses are also styled *inhabitants* of the borough.

Steward. The reeve and *steward* of the borough for the time being are appointed justices of the peace :—and power is given to the reeve and burgesses to assemble yearly to select from the

* Pat. 1 Eliz. p. 1.

† The object of these charters of Queen Elizabeth, is said to have been to invite persons of industry and skill to inhabit in the boroughs, and to add to their prosperity and opulence. 1 Peck. 160, argd. Tewkesbury case.—There can, therefore, be no doubt that the privileges were intended for the *inhabitants*.

twelve principal burgesses two *men*, and present them to the *Elizabeth*. other* *men* and *inhabitants* then assembled, the major part *Inhabitants* of whom should elect the reeve.

And when any vacancy occurred in any of the principal burgesses, they and the reeve were to assemble within eight days, and elect one other person, then an *inhabitant* of the borough, to be a principal burgess.

A serjeant-at-mace is then appointed for the execution of all precepts to be executed within the borough, and who was to have the same power as those of the city of *London*.

London.

That the reeve and burgesses should elect a *steward*, with powers to hear and determine all actions, real and personal. The charter then concludes by granting a prison, with a criminal jurisdiction. A fair, market, and profits therefrom accruing, and freedom from tolls, &c. for all the burgesses of the borough.

But there is no clause in the charter purporting to give any power to elect members to Parliament.

This charter, however, was in the second year of James I. 1604. forfeited, and the corporation dissolved, the king seizing the franchise; and in the 20th of Charles II., a quo warranto was 1667. brought against the corporation, upon which judgment was given against them.

Notwithstanding which, Minehead continued to return members to Parliament; and both before and after the dissolution of the corporation, the returns were by the freemen and burgesses, and the burgesses and *inhabitants*. And although *Inhabitants* its right to send members to Parliament was questioned in the reign of James I., yet it ever afterwards continued to 1620. send representatives, and therefore its privileges as a parliamentary borough were not, in fact, affected by the dissolution of the corporation.

In the course of this discussion, it was alleged that the borough did not challenge its privilege by charter, but by prescription; for which latter claim it seems clear that there *Prescription* was no pretence.

The corporation having ceased, and the provost's office

* As in the East Looe and other charters.

Elizabeth. being therefore entirely determined, the *constables*, as Constables. siding over the place, became the returning officers, in the Taunton. same manner as they did at Taunton, under similar circumstances. And accordingly in the fourth year of George I., 1717. there was an express resolution to that effect.

It appears from one of the petitions, that Minehead had also, in another respect, attempted to imitate Taunton, for the "pot-boilers" are expressly mentioned. But in that same year the right of election was in substance declared to be according to the common law—namely, in the "*parishioners*;" for it was requisite that every person should have resided long enough in the place to have made him a *permanent inhabitant*—which in fact is the same as being a *parishioner*; and it was added, that they must be *housekeepers*,—which necessarily subjected them to the other common law liabilities of paying *scot and lot*, and being *sworn* and *enrolled* as *resiants* at the *court leet*, at which the *constables*, the returning officers, were yearly chosen.

Scot and
Lot.
Leet.

Such was the right of election till the time of the Reform Act; and it is impossible for any case to prove more strongly than this of Minehead, that the right of election was not a corporate right; but that even if the corporation ceased, the return would then be made by the officers and the burgesses pointed out by the common law.

Common
law.

Tamworth.
Camden.

The fifth is *Tamworth*:—which Camden says, during the reigns of the Mercian kings, was a royal town, and a celebrated place; and Lambard, quoting the Chronicles of Worcester, says it was called, in divers donations made to it by the kings of Mercia, "*locus famosus, notus, et illustris*." It was the seat of government under Offa, Cenwulf Beornwulf, and had a mint. The town was destroyed by the Danes; but Elfleda, the wife of Ethelred, and sister to Edward the Elder, repaired it, and made a *castle* there. Upon her death, Edward took it, fearing it might fall into the hands of the Danes. It is situated partly in the county of Stafford, and partly in Warwickshire, and both sheriffs make the return for it, on two different precepts: the one from the sheriff of War-

wick, requiring the burgesses to elect *one* member—and the Elizabeth.
other from the sheriff of Staffordshire, requiring them to elect
two members—a whimsical variety, for which it would be very
difficult to account.

The borough of Tamworth, as we have seen before, is not
expressly mentioned in Domesday;* but its burgesses are Domesday.
mentioned, and amongst the king's lands in Warwickshire,
the entry as to Coleshelle. So that there can be no doubt
that it was then a borough; and from the burgesses being
described as *in* that place, though the tenants of another
manor, there seems, even in that early period of its history,
to be a strong inference that its burgesses were its *inhabitants*,
and that they were not made so by reason of tenure *only*.

Tamworth continued a borough in the two succeeding
reigns, as in a record of the time of Henry I., its aid (aux- Hen. 1.
ilium) is entered at 30*s*.

It also continued a borough in the fifth year of King 1139.
Stephen; but was then probably falling into great decay—
because the sheriff returns an amount of 25*s*. of the past aid
of the borough of Tamworth, which therefore appears to have
been in arrear, although it was 5*s*. less than the aid in the
former year; and in the pardons, by writ of the king, to the
burgesses of Tamworth, is included this aid, on account of
their poverty,

In the second year of the reign of Henry II., it also re- 1155.
mained a borough, as is proved by the sheriff's account of
its aid of 25*s*. And its donum is returned, in the fifth year 1158.
of the same reign.

From this time there does not appear, for an interval of
many reigns, any mention of it as a borough; and the sub-
sequent records, in the reign of Edward II., will show that
it had before that period ceased to exercise those privileges. In
all probability, it had done so between the reign of Henry II.
and the close of the reign of Henry III.—as neither in the
return to the council, in the 39th of that reign, nor during
the reign of Edward I., is there any return from this
borough.

* Vide ante, pp. 253. 256, 257.

Elizabeth. This supposition is confirmed, by its being called "*villata de Tameworde*," in the roll of a talliage of the 7th of Henry III. —in which same roll, Stafford is called a borough.

1297. Discontinued. 1315. However, in the 9th of Edward II., the sheriff of Staffordshire being required to certify how many boroughs there were in his bailiwick, returned only Stafford*—it had, therefore, at that time, without doubt, no separate jurisdiction, or the sheriff must have known it; but having ceased to be a borough, it had again come under his jurisdiction, as a part of the county.

No members. 1562. Like the three preceding places, it did not return members to Parliament before the fifth of Elizabeth†—and the early grants to it were to the town and tenants, and not to the burgesses.‡

It was incorporated by Queen Elizabeth, in the third year of her reign:—and there are two bailiffs, a recorder, high steward, and 24 principal burgesses:—but whether these were any thing but the king's officers—the officers of the leet—and the jury—might be very questionable.

From the fifth of Queen Elizabeth, during the remainder of her reign, and that of James I., and Charles I., till the end of the Long Parliament, Tamworth regularly returned members. But it did not in the Parliament of the sixth, eighth, or 11th of Charles II.

1670. Right. In the 23rd year of Charles II., the right of election for this borough came before a committee of the House of Commons. Mr. Serjeant Charleton reported its proceedings; and the question appears to have been, Whether the right of election was in the *bailiffs and 24 capital burgesses*, or whether it was in the *populacy and burgesses at large*? And the committee decided, that it was in the former; and *negatived* the right of the latter.

Upon what evidence this determination was founded does not appear. It however did not stand the test of further inquiry; and it was, in effect, set aside 28 years afterwards, by the resolution of a committee, which will be hereafter

* See before, pp. 256, 596.

† See before, p. 654.

‡ The castle was part of the vast possessions of the family of Marmions.

stated—and which, as far as it annuls this determination, ^{Elizabeth.} was confirmed by another committee in the year 1722.

In the 10th of William III., a petition was presented to ^{1698.} the House respecting the election of this place; and Sir Rowland Gwyn reported the proceedings of the committee.

From which it appeared, that the right of the *inhabitants* <sup>Inhabitants
Scot and
lot.
Free-
holders.</sup> paying *scot* and *lot* was not disputed; but the petitioner contended, that all such also as had *freeholds*, or paid *scot and lot*, had a right to vote.

The sitting member denied the right of the freeholders.

The petitioner proved an usage by the non-resident freeholders, although not paying *scot* and *lot*, for 30 years.

The sitting members recited the above resolution of 1670: and proved, by witnesses, that from 1661, the right had been in the bailiffs, capital burgesses, and *scotters* and *lotters*; and that the out-freeholders did not claim the right of voting till 1679, when they were admitted by a bailiff who was steward of the candidate for whom the freeholders voted.

The committee resolved, that the right was in the *inhabi-* ^{Resolution.} *tants paying scot and lot*, and in such persons who have *free-* <sup>Non-resi-
dent free-
holders.</sup> *holds within the borough*, whether they were resident or not—one of the earliest instances of the introduction of non-residents, in defiance of the clear and express words of the statute of Henry V.

With reference to the *inhabitants*, the inquiry was, whether they were *housekeepers*—or servants—inmates—joint occupiers—or living with their parents—clearly showing, that although the general term “inhabitants” was used, yet the right, in fact, was considered and acted upon, as belonging to the *householders*; from which all the consequences followed of their paying *scot* and bearing *lot*, and being *sworn* and <sup>House-
keepers.</sup> *enrolled* as residents at the *court leet*, which was held in the borough. <sup>Scot and
lot.
Leet.</sup>

It appears also, that the vote of a person whose *house* had been *divided* just before the election was disputed. And it seems to have been taken for granted (as undoubtedly it ought to be), that the payment of *scot* and *lot* included

Elizabeth. all charges—the *church*, as well as the poor rate—and also
 Rates. the constable's rate.

1722.

In the ninth of George I., the right of election again came under discussion, and similar evidence was given with respect to the freeholders; but their voting was alleged to be an innovation on the rights of the borough; and the committee properly limited their determination as to the right of election to the *inhabitants*, being *householders*, *paying scot and lot*.

House-
holders.

The petitioner contended it was a *borough by prescription* (which it undoubtedly was, as appears by the extract from Domesday, and other records mentioned before), and that the right was in the *inhabitants paying scot and lot*.

The sitting member insisted, that the *freeholders* had also a right to vote whether resident or not.

The petitioner proved, as well by direct evidence as by reputation for 50 years, that the *freeholders who were not inhabitants* did not vote, and that they were first brought in about 50 years ago, when they were admitted by one of the bailiffs, who was steward to the candidate for whom the freeholders voted, but they were rejected by the other bailiff, who refused to sign the return; they had however voted ever since:—but it was urged that it was an innovation, and that it was inconvenient, as multiplying freeholds.

The sitting member called a witness to prove, that the freeholders had voted for 60 years past; and two others to show, that they had voted for the last 20 years. And it was contended that there was no room to alter the decision in 1698, which affirmed the right of the freeholders.

House-
holders.Inmates.
Certificate
men.

In the investigation of the several votes, the necessity of being *householders* was admitted on both sides; and objections were taken again, by both candidates, to persons as *inmates*—and to *certificate men*—as not being legal and permanent inhabitants of the place. And the payment of both church and poor rates was also insisted upon.

And thus, after ineffectual attempts to introduce the two usurpations of the *select body* on the one hand—and the non-

resident freeholders on the other—the right of election—that Elizabeth. is, the class of persons who were the *burgesses* of this place—Burgesses. was legally and constitutionally defined to be the *inhabitant householders, paying scot and lot*.

With a view to the general right of election for boroughs, Tamworth affords a striking instance of the principles which ought to be applied to this subject; of the varying grounds upon which committees were formerly in the habit of deciding, and of the uncertainty of their determinations.

Tamworth being a borough by prescription, was properly enough admitted to its right of returning members, although it had discontinued for nearly 400 years.

The right of the select body, which was created before it returned members to Parliament, though once affirmed by the resolution of a committee, to the exclusion of the populary, was afterwards properly negatived, and the right of the populary established. And although the right of the freeholders, whether resident or not, was once supported by a decision, it was afterwards confined to those freeholders who were also inhabitants; in fact, bringing back this right of election to the pure principles of the ancient common law.*

It should be also observed, that a corporation was established in this borough before it appears to have returned members to Parliament, and to have continued an existing body; and, analogous to Reading, Windsor, and several other places, the corporators, as such, had no right of interfering in the election of members of Parliament.

The sixth and last place was *Stockbridge*, which in like manner never returned members to Parliament at this time. It never was incorporated, and all its municipal functions were, as we have seen, always performed at the *court leet* of the borough.

Stock-
bridge.
1562.
Not incor-
porated.

Leet.

* There were subsequent contests as to right, and in 1741 it was established, that certificate men had not any right. The last petition against the return was in 1819, when the question was raised, whether it was necessary to pay the church as well as the poor rate. The committee decided it was not necessary. The evidence on that occasion went to confine the right to parishioners.

Elizabeth. Although not incorporated, it had, like many other places,
Seal. a common seal and serjeants-at-mace.

This place has frequently been contested—its rights much discussed—and the conduct of the voters with respect to bribery often censured :—but yet there has been no express decision as to the right of election.*

1624. In the 21st James I., the petition was by the *inhabitants* ;—
Inhabitants
1689. in the 2nd of William and Mary, by the *burgesses* and *inhabitants* ;—in the 5th of William and Mary, by the *inhabitants* ;—and in the 8th of William III., by the *inhabitants* and *freemen*.† In point of fact, the elections were always made by the *inhabitants*, *paying scot and lot*.

Thus we have shortly traced the histories of those six places, and find in each of them that they were first called to return members to Parliament by Queen Elizabeth :—that in all, after some attempts at varying usurpations, the right of election, (which it must ever be remembered is the same question as the right of burgess-ship,) was determined to be, according to the common law, in the *inhabitant householders*, *paying scot and lot* :—that in each of these boroughs there was a *court leet*, and that the legal consequence of their being such inhabitants was, that they ought to be *sworn* and *enrolled* at that court as *resiants*—thus in every respect fulfilling the ancient law, which has existed and generally prevailed unaltered, notwithstanding all innovations, from the earliest periods of our history to the passing of the Reform Bill.

Sworn.
Enrolled.

Notwithstanding the right of these six places to return members to Parliament was thus questioned, and no further account or proof of their title to this privilege appears afterwards to have been given, still they continued to send representatives ; and the only reason which is suggested for it is, that “ the queen’s inclination was well understood.”

Statutes. Many statutes important to the public weal, but not

* See Hob. Rep. 107.

† See Glanv. 97.

material to our inquiry, were passed during the same Par-
liament. Elizabeth.

The first was the assurance of the queen's royal power over all estates and subjects within her dominions. It was chiefly directed against the see of Rome, and was intended particularly for the purpose of securing the allegiance of ecclesiastical powers—who being exempted from the jurisdiction of the court leet, were not bound to take the *oath of allegiance*. That oath, therefore, was by this statute expressly required from them, as well as others—chiefly persons who either were not, or were thought not to be, liable to take the oath at the view of frankpledge. Ch. 1. Ecclesiastics. Oath of allegiance.

Hume observes, “that this statute did not extend to any” “of the degree of baron, because it was not supposed that” “the queen could entertain any doubt with regard to the” “fidelity of persons possessed of such high dignity.” But the fact was, that they took more solemn oaths in the House of Peers; and on that ground were exempt from suit at the court leet. It rarely happens that acts of state are founded upon such punctilious grounds as Hume suggests: but rather upon some sound distinction of reason or fact. Hume.

Further provisions are made for the repair of towns;* for the punishment of vagabonds; and for the relief of the poor and impotent of every parish, “as every person will of his charity, that they may not openly beg;” and if any *parishioner* should obstinately refuse to pay reasonably towards the relief of the poor, or should discourage others, then the justices were enabled to tax him. An act was also passed for the regulation of artificers, labourers, servants of husbandry, and apprentices; by the 10th section of which it was provided, that “none of them should depart forth of one city, town, or parish to another—nor out of the lath, rape, wapentake, or hundred—or out of the county or shire where he last *served* without a *testimonial*, under the seal of the city or town corporate; or of the constable and head officer, and of two honest *householders*.” Vagabonds. Poor. Testimonial. Householders.

* See also 26th Hen. VIII., ch. 8, as to Norwich—ch. 9, as to Lynne—and 27th Hen. VIII., ch. 1, as to Nottingham, Gloucester, Northampton, and other places.

Elizabeth. So that *permanent responsible residence* was the clear object of the Legislature. And the persons who were enabled to take apprentices were the *householders, dwelling or inhabiting* in any city or town corporate, using any art—and they were enabled to have the son of any freeman—not occupying husbandry—nor being a labourer—and *inhabiting* the same—or in any other city or town that then was or thereafter should be, and continue *incorporate*—to be an apprentice, after the custom of the city of *London*, for seven years.

All the other provisions of this period have likewise a similar reference to *residence* and *inhabitaney*. And the charters of the same date are usually to the *inhabitants*, where they are general grants to the places; and to those *inhabiting* where they are given to particular companies or crafts—as to the merchant adventurers of Newcastle-upon-Tyne, &c.*

The municipal documents of that period also establish the same point—thus in *Sandwich*, in the sixth year of this reign, 12 persons are appointed to tax the “*inhabitants*,” for the living of the preachers and ministers of the town.

And in *Poole*, the *inhabitants* concur in allowing a lane to be taken on certain conditions; on failure of which the party was to restore it to the use of the town and the *inhabitants*.†

And in a case at law it was held, that a custom for the tenants, *residents*, and *inhabitants* within a manor, to make bye-laws, was good.‡

As to *London* also, we find that in the fifth year of Queen Elizabeth, the common council proposed an ordinance to restrain the receiving of *freedom by redemption*—that evil which tended so much to interfere with the ancient rigid rules as to *inhabitaney*; and which has led, in modern times, to the great increase of *non-resident freemen*—in fact totally altering the nature of citizenship; and almost destroying the local nature of their privileges, by making them no longer exclusively applicable only to the inhabitants of *London*, but to persons residing out of the city, whilst a

* 1559, 1 Eliz. 2 Brand, 656.

† So also 1561, 3 Eliz.

‡ Moore, 75, 8 Eliz. Scarling v. Criett.

great portion of those within it are, contrary to its ancient customs, excluded from a participation in its right. Elizabeth.
1564.

That this system was contrary to the practice and principles of the original constitution of London is also shown by this fact; that in the next year—the sixth of Queen Elizabeth, “time was granted to those freemen, with their families, to come and *live in the city*, on pain of disfranchisement.”

In proof of the jealousy which existed as to the residence of *strangers* within the city, by which after a year Strangers. and a day, according to the ancient common law, they might obtain a right to enjoy the privileges of citizens;—there were in the ninth and tenth years of Queen Elizabeth inquiries 1566-7. and certificates thereupon made by the churchwardens, constables, and sidesmen, of all the *strangers* dwelling within the respective parishes.*

POOLE.

As a specimen of the charters which were granted at this period, we insert the following extracts from that of Poole, of the 10th year of Queen Elizabeth, for which the 1568. burgesses and *inhabitants* concurred in applying to the queen. It contains by inspeximus the charters of the third of Henry VIII., the first of Edward IV., and the 11th of Henry VI., and confirms the privileges granted by them to the mayor, bailiffs, burgesses, and *inhabitants* and their Inhabitants successors. It then recites that “the mayor, bailiffs, burgesses, and *inhabitants*, from time, &c., had enjoyed divers “customs, liberties, &c., as well by *prescription* as by charters made to the burgesses and *inhabitants*, and their *heirs* and successors: which for many years past they had not “used and enjoyed, by which the town had suffered great “damages, and losses, &c., and was threatened with almost “utter ruin; and the good government and rules of the town “were entirely extinguished. Whereupon the burgesses “and *inhabitants* had prayed the queen, for the better government of the town, to renew and create them, the bur- Prescription.

* See Bentley's book, St. Andrew's, Holborn.

Elizabeth. " gesses and *inhabitants* into another body *corporate* and
 1568. " politic, &c. The queen, therefore, hoping that if the *in-*
 Corporate. *habitants* and their successors should be enabled by her

" grant to enjoy more ample honours, &c., they then would
 " feel themselves more especially bound to perform such ser-
 " vice as they should be able :"—Granted, that the town

Name. should be a *free town, incorporated* by the name of the mayor,
 bailiffs, burgesses, and " commonalty," and have perpetual
 succession, with the usual corporate powers ; and that the
burgesses should elect within the town from *among themselves*

Mayor, &c. yearly one mayor and two bailiffs ; and also on vacancies to
 elect another *fit and discreet person* of the borough to be
 mayor or bailiff.

Escheator. That the mayor should be the escheator ; and that " the
 " bailiffs, burgesses, and commonalty, and their successors,
 " and the *inhabitants* and *resiants* within the town, should
 " not be held to obey any mandates of the steward and
 " marshal, or clerk of the market of the household ; and that

Non-intro- " they should in nowise enter the town, suburbs, and pre-
 mit. cincts, but the mayor to be clerk of the market.

Merchant That no *merchant stranger* should sell or buy any merchan-
 Strangers. dise within the liberties, of any merchant stranger, *otherwise*
than in gross.

Staple. And that there should be in the town one *staple* for recog-
 nizances of debts.

South- That the mayor, bailiffs, burgesses, and commonalty, their
 ampton. *heirs* and successors, should elect yearly from amongst the
inhabitants of Poole, and the *suburbs thereof, or from amongst*
others, as well brokers of merchandises, barges, and boats,
 as all, and all manner of *porters* and *packers* ; as the mayor,
 bailiffs, and burgesses, of the *town of Southampton* and their
 predecessors heretofore have been accustomed to elect and
 appoint.

County and it was also granted that the town, with the suburbs
 corporate. and precincts, should be one entire *county corporate* in deed
 and in name, and distinct and entirely separated *from the*
county of Dorset, to be called " the county of the town of
 Sheriff. Poole ;" and that there should be *in the same town one sheriff* ;

the burgesses and their successors in every year electing *one discreet, able, and fit man* from their *common burgesses* to be sheriff, who should hold the county courts within the town monthly, *with the same powers as any county sheriff*; and that no other sheriff should intromit within the liberties.

Elizabeth.
1568.

County
Court.
Non-intro-
mit.
Court.

That the mayor, bailiffs, burgesses and commonalty, might hold a court in the guildhall before the mayor and the senior bailiff weekly; of all pleas of debt, &c. with powers of arrest and attachment of the bodies and goods, &c. within the liberties; and that they might hold a court of pie-poudre in the same manner and form, and by the same process as theretofore accustomed in the town of *Southampton*; with power to attach defendants in the same suits, &c. in manner and form as the sheriffs of *London*.

Pie-poudre
Southamp-
ton.
London.

That the mayor should have assise of bread; and that no marshal of the household should enter the town or precincts.

That the mayor, recorder and four burgesses should be the keepers of the peace:—and that nine, eight, six, five, four, three or two of them, should for ever thereafter be *justices*; of whom the mayor or recorder should be one.

Justices.

That the keepers of the peace, and the justices of the county of Dorset, should not enter the town, liberty or precincts.

Non-intro-
mit.

That the mayor, bailiffs, burgesses and *commonalty* should have for ever, in support of the charges incumbent upon the town, the liberty of the view of *frankpledge*, and all things which to such views belong, within the town, liberty and precincts; and all fines, &c. And all goods and chattels of persons outlawed and waived.

Frank-
pledge.

That the mayor, bailiffs, *burgesses* and *commonalty*, nor any *inhabitant* or *resiant dwelling* and *residing* within the town and liberties of Poole, should thereafter, against his will, be put or impannelled in any assises, juries, inquisitions, &c. out of the town and liberties of Poole.

Juries.

And that the *inhabitants*, *burgesses* and *commonalty* of the town might have their guild, and all their liberties, franchises, privileges, jurisdictions and customs, by land and by sea, as

Elizabeth. well and peaceably as the mayor, bailiffs and burgesses of
 1568. the town of *Southampton*.

And that the mayor, bailiffs, *burgesses* and *commonalty*, and their *successors*, and *all the other inhabitants and burgesses*, should be quit and discharged of toll, murage, &c. and all customs throughout the land.

Quit of toll.

That the mayor, bailiffs, burgesses, and commonalty should have the *return of writs*, with a *non-intromittant* clause. And to elect from among themselves a coroner.

Return of writs.
 Coroner.

And that no one of the "*inhabitants* or *resiants*" within the town should be *impleaded* out of it.

That no writ should run within the liberty of Poole, unless a writ of right, of novel disseisin, and a writ of dower unde nihil habet, as is accustomed within the town of *Southampton*; but that they through all the realm might have and hold all their liberties and free customs thitherto obtained and used, as quietly and wholly as the burgesses of *Southampton* or any others in the kingdom, more freely have and hold within their liberties.

Southampton.

The usual general clause for the using and enjoying the privileges is added; with a penalty of 10*l.* for obstructing them.

And finally, the mayor, bailiffs, burgesses, and their successors, for ever, were to be quit of *murage* and *paivage*, &c.

The reader will have observed, that, throughout this charter, the *inhabitants* are treated as the persons *incorporated*; and as those who are to enjoy the privileges, and perform all the municipal functions. It is also clear from

Inhabitants

many clauses of the charter, that it required *residence* for those who were to participate in the privileges. The burgesses are frequently described as *persons of the borough*. Repeated provisions show clearly the intention of the queen to prevent, on all occasions, the necessity of the burgesses going from their borough. How can it then be conceived, that she nevertheless intended that there should be non-resident burgesses?

Residence

Non-residents.

The expression, *inhabitants* and *resiants*, is clearly intended to be the same as that used before, of *burgesses* and *inhabitants*. It is difficult to suppose that there was any

real difference between these terms, or that they were used to describe two distinct classes of persons:—which is the real answer to the hypercritical arguments founded by many persons upon cumulative words of this description. “*Residents*,” properly speaking, is the appropriate term for the “*sworn suitors at the court leet*,” or “the permanent inhabitant householders;” and the more general term “inhabitants,” was probably intended to include the new comers—those who then or thereafter might not have inhabited long enough to have been duly sworn.

Elizabeth.
1568.

The staple has been treated by Dr. Brady as the origin of many boroughs; but the clause in this charter appears to afford a strong inference against that supposition. It is the first time in which any mention of the staple occurs in the charters of Poole; the clause itself importing, that it is a new grant—and this place had been a borough for many centuries before. Besides the staple towns were well known, and they by no means included all the boroughs.

The staple.

In the clause relative to the vacancies in the offices of the staple, “*departure*” from the office is spoken of:—which must mean departure from the *borough*, and is treated as *actually vacating it*. But the cases of the *King v. Ponsonby*,* and the *King v. the Mayor of Truro*,† have decided, that *actual removal* by the corporation is necessary to complete the vacancy; although, upon an application for a mandamus, in the case of the Brighton commissioner, the mere fact of quitting the place was held to put an end to the title and the office.‡ As in many boroughs the majority of the corporation were non-resident, or at least had an interest in continuing the non-resident corporators, the result of the decisions in the Irish and Truro case was, that the corporations themselves refused to interfere; and consequently the clauses of this description which occur in many charters, the

Non-residents.

* 1 Ves. Rep. p. 1.

† 3 Barn. & Ald. p. 590.

‡ Also, in the *Att.-Gen. v. Wilkinson*, 3 Brod. & Bing. 260, a deed of the 19th of James I., disqualifying the feoffees of a school at Enfield, if they went to live out of the parish. In neither of these instances of the commissioner or feoffee, could any one doubt of the effect of the statute or of the deed. Why should any doubt have been entertained in the other cases, which related to corporations? Do law, reason, or language, vary when applied to those bodies?

Elizabeth. intention of which cannot be doubted, were rendered totally
 1568. inoperative.

It should be also observed with respect to residence, that, in the clause relative to the appointment of brokers, &c. where the queen intended to permit the selection of individuals to perform these particular offices from persons not residing in the borough, it is expressly so stated:—which affords another strong inference that in all other cases the persons mentioned were to be *residents* or *inhabitants* of the borough.

Jurors. The terms *dwelling* and *residing*, introduced into the clause relative to juries, and applied to *inhabitants* as well as *resiants*, seem clearly to show that those terms must mean the same class of persons as assumed before, for it appears impossible to say that there could be any difference between an *inhabitant* and *resiant*; both of them being obliged to *dwell* and *reside* in the town. The exemption from juries is also given to the *burgesses*; and can it seriously be contended, that they could be entitled to it if they did not reside in the borough—and yet it is given to *all* the *burgesses*—so that the clear inference from this clause also is, that the *burgesses* should be *resident*.

It is singular, that only in the clause which relates to the guild, the term “*inhabitants*” precedes that of “*burgesses* and *commonalty*.” The probability is, that this was altogether accidental, and merely another instance of the carelessness and inaccuracy with which these charters were composed. The error seems to consist in assuming their accuracy, and arguing upon their terms, as capable of precise application. If, however, it is necessary, or justifiable, to do so, the inference from the change in the succession of the words would be, that the guild was the more immediate privilege of the “*inhabitants*,” (at least, if they really were a separate class from the *burgesses*,) and that therefore they were put first. Aliens, as merchant strangers, were sometimes allowed to be members of the merchant guilds, and to *inhabit* on condition of their paying *scot and lot*:—but they could not be *burgesses*. The general term of *inhabitants* might therefore be intended to include them. But if it is so, it affords

a singular comment upon the doctrine of non-residents; which has been founded upon the supposed connexion of burgesses with guilds, &c. Besides the assumption is, that burgesses and inhabitants are distinct classes:—and if so, and they are *all* included in the guild, it cannot be said it is the guild which makes them burgesses. Indeed, even without such minute and critical investigation of the words of this clause, it must be seen, from the general import of it, that the privilege of the “guild” had nothing to do with the creation of burgesses, or the right of returning members to Parliament. If it had, then this clause would go the length of giving that right to the “inhabitants and commonalty” as well as the burgesses. At least, if they were distinct classes, which would carry the matter much farther than the supporters of the corporate right intend—and even farther than the common law would warrant—for that would merely extend the right to the “*burgesses*,” that is, the “*sworn inhabitant householders of the borough*,” certainly the most reasonable construction of the term, as well with reference to history and law, as to common sense. The precepts require the election to be by the *burgesses*, and the returns are almost universally made by them; so that *inhabitants* (merely as such) have no ground for claiming the right:—and mere inhabitancy, unascertained by any *enrolment* or *swearing*, is too undefined a description to answer the word “*burgess*,” and too uncertain to be adopted by the law. Finally, it is reasonable and just, that he, who has pledged himself to perform the laws, by taking the *oath of allegiance*, and bears the burdens of the state, by reason of his being a *householder*, should share, by his vote, in the election of those representatives, who are to concur in making the laws he is to obey; and in the imposition of those burdens, which he is to share.

Elizabeth.

1568.

Guild.

Burgess.

Oath.

Householder.

The clause relative to the quittance from toll, shows distinctly that the composition of these charters is not so accurate, that a precise application of every word in them can be expected. It grants to the mayor, bailiffs,

Elizabeth. burgesses, and commonalty, that they and their successors, and all *the other inhabitants and burgesses*, should be quit of toll, &c. It would seem that all the persons in the borough were included in the first terms "burgesses and commonalty." At all events, all the burgesses must have been, because that term is expressly used; and yet immediately afterwards follow the words, "and all the other inhabitants and burgesses," which latter word is clearly tautologous and unnecessary. Probably the real meaning of this passage, as well as the others of the same kind in this charter, where cumulative words are used, is merely to include all the men or people of the town; and the tautologous words are only introduced for greater caution.

Notwithstanding all these clauses, and the general import of them, *non-resident* burgesses were for a long time admitted, allowed, and voted for this borough.

But that this was in direct contravention of the ancient documents relating to it, may be collected from this circumstance—that in the 25th of Elizabeth, (which is the first entry at present in existence of the admission of a burgess,) one William Pitte, of Weymouth, was made a *free burgess* of Poole; and was to give 200 wt. of good corn powder for his freedom—and for his *absence*, he was to pay to the use of the corporation, 20s. per annum, *till he should come to inhabit in Poole*; and he was to give his attendance always at the Guildhall, on Friday next before St. Matthew's-day, at the election of the officers for the service of her majesty; and for such corn or grain as should be laden by him that year, he was to pay half the duties. And when God should appoint his mother's decease, he promised within a short time *he would repair thither*, and *inhabit* in the town. And this entry is followed by a memorandum, that Pitte had paid the powder, and the 20s., to Michaelmas, 1690, and then he came to *dwell* in the town.

It is obvious, that Pitte was allowed to be entered as a burgess of Poole preparatory to his coming to *reside* there, on the payment of the powder; and that he was specially

excused from *residence* at that time, on the ground of his ^{Elizabeth.} aged mother residing at Weymouth; but it is clear that he ^{1568.} was then trading at Poole.

An instance also occurs, in the 39th of Elizabeth, of John ^{1596.} Dobbins, one of the burgesses, who was amerced in the sum of 40*d.*, for his *absence* from the assembly for the elections; and it was directed, that if he should *absent* himself at the ^{Absence.} next elections, without lawful cause shown to the mayor and recorder, he should be disfranchised, without further assembly.

That the *resiants* were the burgesses of Poole before the ^{Resiants.} granting the charter of the 14th of Elizabeth, is also clear, from this fact—that till then the *court leet* was duly held in Poole, and the mayor and other officers were elected at it. ¹⁰⁷ And as a farther proof of the revival of the full functions of that court, on the dissolution or ceasing of a corporation—as we have seen in the cases of Taunton* and Minehead†—during the suspension of the charters of Poole, in the 26th of Charles II. to the fourth of James II., several courts *leet* ^{Leet.} were again held there, for the purpose of electing the officers.

In the recital of the charter, it is stated, that the inhabitants of Poole had enjoyed many liberties by prescription. This is possible, if it was a borough by prescription; because whatever the modern doctrine may be, it is certain that the *inhabitants* of the ancient boroughs did, before the time of ^{Inhabitants} legal memory, enjoy many liberties and privileges, notwithstanding they were not incorporated.‡ But it is not clear that Poole was a borough by prescription. It is not mentioned as such in Domesday. However, on the whole, it is probable it was a borough before the time of Richard I.; because, in the beginning of that reign, as we have seen before,§ there was a grant to the "*burgesses*," as a body then existing. But there is no pretence for saying, that it was a corporation by prescription.||

This term "prescription," occurs not only in this charter,

* See before, p. 165.

† See before, p. 1228.

‡ 2 Inst. tit. Mag. Car. cap. 14. p. 247; 4 Co. 42.

§ See before, p. 367.

|| See before, pp. 594, 657, 794, 854, 969.

Elizabeth. but in many of this reign; and has led to the adoption of extensive errors on this subject.

Prescription. In the West Looe case, it was supposed, by the present learned lord chancellor of Ireland, that it was decisive proof of that place having been incorporated by prescription, because it was said, "that as the inhabitants were in that charter, as in this, asserted to have enjoyed privileges by prescription; and inhabitants could not prescribe but when incorporated:* therefore it was clear, they must have been incorporated before the time of legal memory."

Incorporations. This ingenious legal reasoning, is first answered by the fact, that, in direct contradiction to this inference, neither Poole—nor West Looe—nor indeed any place—was incorporated before the time of legal memory—nor till more than two centuries subsequent to that period. Besides which, the probable practical explanation of the term is, that it alluded—as it was then generally used—to a period of 40 or 50 years; and which was the ecclesiastical time of prescription, then frequently referred to—particularly with reference to questions of tithes, under the statute of Edward VI., and the monastic possessions, under the statute of Henry VIII.

Truro. Another instance of the use of this word is to be found in 1588. the charter of Truro, of the 31st of Elizabeth, in which there is a confirmation of all lands and liberties enjoyed by the mayor and burgesses, "by whatsoever pretence of any corporation, reason, or colour of any *prescription*, writing "or writings, by the space of 50 years last past, or more:" adopting a period of limitation far short of that of legal memory.

1573. The charter to West Looe, in the 16th year of this reign, has a recital similar to this of Poole; and so likewise that 1586. of East Looe, in the 29th year of Queen Elizabeth.

In subsequent charters of this reign, the queen proceeded still farther in the recitals, and expressly alleged, that the places to which they were granted, had been from time immemorial incorporated.

* See West Looe case, p. 136.

The whole tenor of the history we have traced, as well as ^{Elizabeth.} the fact of the particular period when the first charter of incorporation was granted, all tend to show the inaccuracy of this assertion: but there is no doubt, that an opinion then existed, though inaccurate, that some places had been incorporated from time immemorial;—thus in a case, in the 10th of Elizabeth, relative to *York*,* it was alleged, that the mayor, bailiffs, and citizens of that city, had existed from time immemorial; and that, in the first of Richard II., they were *incorporated* by that king, to be a mayor, sheriff, and citizens. But we have before noticed that charter,† which clearly is not one of incorporation. So with respect to Poole, ^{1518. York.} an heraldic visitation, speaking of the mayor, bailiffs, burgesses, and *inhabitants*, states that the *inhabitants* were incorporated by William Longespie,‡ and the incorporation confirmed by William Mountacute;§ but we have before seen, that neither of them were, in point of fact, charters of incorporation, nor is there any pretence for the assertion. The Clarencieux king of arms of course stated that which he was told; and his credulity was perhaps strengthened by the hospitalities he received:—as these recorders of the memorials of our ancestors were invariably received with respect and kindness. His certificate, however, is only to be regarded as evidence of that to which it may with safety be applied:—namely, as a record of what was then the general opinion; and therefore the assertion in this document, that the *inhabitants* were incorporated, may be taken as correct, and as the understanding at that time, proved by the charter; although the other statement, as to the early incorporation, was not founded in truth, and is to be taken with caution—because it was at that time the wish and interest of every place to be esteemed a corporation by prescription. ^{Poole.}

Besides the summoning of the six new boroughs, to which we have before referred, Queen Elizabeth also resorted to the

* Dyer, 279.

† See before, p. 739.

‡ See before, pp. 367, 657.

§ See before, p. 794.

Elizabeth. re-summons of places which had before returned members
Boroughs to Parliament.
restored.
Beverley.

In Yorkshire, *Beverley* had sent representatives from the 26th of Edward I. to the close of that reign. In the first and second years of the reign of Edward II., and in the second year of Edward III., the sheriff returned that he had received no return to his precept; but in the 33rd of Edward III., it sent two members.

We have before seen the charters to this place, in the reigns of Henry I.,* Richard I.,† King John,‡ Henry III.,§ Edward I.,|| and Richard II.,¶ by none of which was it incorporated.

1562. However, in the fifth of Queen Elizabeth, it was summoned to send members, and returned them accordingly.**

There has been no decision by the House of Commons, showing who were the burgesses—or in other words, what was the right of election. But the members have always
Freemen. been returned by the *freemen*. And as this place was not incorporated at the time of the return being made, in the sixth of Elizabeth, it is impossible that those freemen could be members of a corporation: on the contrary, from their being entitled to their freedom by *birth* and *servitude*, it is clear their right was founded upon the common law.

Subsequently to its being so called upon to return members to Parliament, it was actually incorporated—Queen
1573. Incorporated. Elizabeth, in the 16th year of her reign, granting it a charter of incorporation: a decisive proof that the returning members to Parliament was not founded upon that privilege, or indeed in any manner connected with it.

1685. Another charter of the same description was granted in the first year of James II., which is now the governing charter of the place.

1565. No statutes material to our inquiry passed in the following Parliament. It is only necessary to note, that, in the recital

* See before, p. 304.

† Page 391.

‡ Page 528.

‡ Page 373.

§ Page 465.

¶ Page 746.

** They were Nicholas Bacon and Robert Hall.

of an act touching drapers in the town of Shrewsbury, it is recited of the Company of Drapers, (as the queen recited in her charters with respect to municipal bodies,) that they had been, by a great time, lawfully incorporated and made a body politic:—which assertion must be taken, subject to the observations we have before made. It being also remembered, that the societies could have had no existence at all, unless they were incorporated—not being, like the municipal institutions, aggregate bodies recognized by the law, for the purposes of local government. It appears that this fraternity had, amongst other, the laudable object of supporting the *poor*, which, for the reasons stated before, had necessarily become an important object to the Legislature.

Elizabeth.

Cap. 7.

Corporations.

Poor.

No other Parliament was summoned from this time till the 13th of Queen Elizabeth's reign. Preparatory to which, the queen again interfered, to secure a more favourable result of the elections.

1570.

WELLS.

From the borough books of *Wells*, it appears that the mode of *admission* to the borough continued, as we have seen in the *Cinque Ports*, to be founded upon a *petition* to be allowed to have and enjoy the freedom of the place, and upon giving *pledges* and a payment, for having the entrance into the borough and the condition of being free. Ordinances also were established, about this time, for the making of burgesses—which recognized the rights of those who married *burgesses' daughters* and *widows*, persons, who, upon the principles and doctrine of *villainage*, would clearly be entitled to be considered as free:—and that the law respecting villainage was at that time in use, may be seen by a case from the county of Somerset, of this date, reported in Dyer;* in which the doctrine is applied, as in more ancient times, to the right of freedom as connected with *residence* away from the lord; and with reference to the writ *de nativo habendo*. The case was determined in favour of the party who was claimed as a villain, on the ground, as it is

Admitting freemen.

Ordinances

Burgesses' daughters and widows. Villainage.

* Dyer, 266, 10 Eliz. 1567.

Elizabeth. said, that it was "in favour of liberty." We have therefore, in this instance, clear proof of the same law as to villains and freemen, and their particular rights and duties, continuing in use at this important period, when encroachments commencing upon the rights of freemen,—and their privileges, being mixed up with other matter foreign from their original nature,—it becomes essential to keep in mind, and to mark the continuance of the original law upon which those privileges were founded.

Leet.
Frank-
pledge.
Tourn. Before we proceed with the books of Wells, it may be also material here to note, that the *court leet*, *view of frankpledge*, and the *sheriff's tourn*, were all likewise in full force at this period—of which distinct evidence may be found in the same reporter.*

Appren-
iceship. The ordinances of Wells, to which we have referred, recognize the right of those who have served *apprenticeships*—which title, it will be remembered, we have also traced to the same law of villainage.

Strangers. *Strangers*, or persons coming into the borough, *seeking* the privileges of the place, were, upon the principles we have before explained, admitted, on paying a contribution to the *common stock*.

Common
stock.
Residence. And as a confirmation of the obligation of *residence*, which we have before insisted upon, it appears, that a person, in strict conformity with the common law, was "*discommoned*," or disfranchised, because he had not inhabited within the city for the space of one year.

1570. In the same book of Wells, there is an entry, of the 13th of Queen Elizabeth, of a letter from Sir Hugh Powlett, in the queen's name, desiring the burgesses to elect fit persons to Parliament, on peril of the queen's displeasure.

Members. There is also a letter from the *council*, for the same purpose. And the burgesses elect John Aylworth, who appears shortly before that time to have been the mayor.

1570. Upon the meeting of Parliament, we find, in D'Ewes' Journal,† that certain members were appointed to confer

* Dyer, fol. 233, 6 Eliz. 1563.

† D'Ewes' Journ. p. 156.

with the attorney and solicitor general, about the returns for ^{Elizabeth.} nine boroughs, which it was alleged had returned no burgesses in the last Parliament.

- | | | |
|----------------------------|---|------------------|
| 1.—East Looe, | } | Cornwall. |
| 2.—Fowey, | | |
| 3.—Cirencester, | | Gloucestershire. |
| 4.—Retford, | | Nottinghamshire. |
| 5.—Queenborough, | | Kent. |
| 6.—Woodstock, | | Oxfordshire. |
| 7.—Christchurch, | | Hampshire. |
| 8.—Aldborough, | } | Suffolk. |
| 9.—Eye, | | |

Mr. Mounson* brought up the report, that Mr. Attorney General prayed that the meeting might be made to-morrow, in the afternoon, at Mr. Treasurer's chamber, for conference touching the validity of these burgesses. And at the next meeting of the House, on Monday, the 9th day of April, the report was made of the validity of burgesses, and it was ordered, by Mr. Attorney's assent, that the burgesses shall remain according to the returns; for that *the validity of the charters of these towns, was elsewhere to be examined, if cause be.*

And thus the inquiry into this exercise of the power of the crown was a second time passed by: the members, nevertheless, being allowed to sit, and no further investigation taking place, as far as can now be ascertained.

With a view of properly estimating the course which was taken with these nine places, their histories may here be introduced.

1.—*East Looe* is not mentioned in Domesday. In the ^{East Looe. 1301.} 30th of Edward I.,† Henry de Bodrijan, then lord of East Looe, certified his claim, amongst other things, to a *view of frankpledge* there, ducking stool and pillory, and assise of bread and beer—all of which is within the usual jurisdiction of the *court leet*, and in fact gave this place a *separate jurisdiction from the county at large.* ^{Court leet.}

* D'Ewes' Journal, p. 159.

† Plac. Jur. Ass. apud Launceston.

Elizabeth. In the 14th of Edward II., Otes de Bodrijan, the then lord
 1321. of Looe, granted a charter, in which he mentions the *reeve*
 Reeve. and *mayor*; and the *burgesses* as a body then existing; but
 Mayor. a previous charter of one of his ancestors, speaks of the
 Burgesses. latter only as townsmen.

Looe. It was at that time only called Looe; the opposite town of
 West Looe not then existing.

Aliens. In the reign of Henry VIII., there is a return—now extant
 in the Augmentation Office—by Henry Caylis, then lord of
 Looe, of the *aliens* then in the town.

1553. In the seventh of Edward VI., there is a return of mem-
 bers for Looeburgh, made by the *mayor* and *commonalty*.

Excepting these documents, nothing appears till the time
 1572. when its right to return was questioned; and in the next
 year there was another return, which was made by the *mayor*
 Return. and *burgesses*, stating, that the *mayor* and *commonalty* had
 Burgesses. by their common consent elected the members. From which
 Common- it is clear that the *burgesses* and *commonalty* were the same in
 alty. this borough; as we have seen before in others.

The return is not under the common seal, but those of the
 parties to it. And it will be observed, that it is made by the
 Mayor. *mayor*, although East Looe was *not then incorporated*. In
 Reeve. the above grant, it appears that the *reeve* was the head
 officer; who is again mentioned in a return of the 26th of
 Elizabeth; as well as in the recital of the charter of the
 queen of that date.

1587. It was not till the 29th of Elizabeth, that the charter of

1579. incorporation was granted; and in the 21st of Elizabeth,
 there is a *lease* between the principal burgesses of West
 Looe, and some of the town of East Looe, who covenant for
 themselves, their *heirs* and *executors*; whilst on the other
 hand, those of West Looe—who had been previously incorpo-
 rated—covenant for their *heirs* and *successors*. But the
 people of East Looe, though not incorporated, put their com-
 mon seal to the instrument—another instance of such a
 body using a seal although not incorporated.

Common
 Seal.

1585. The return of the 26th of Elizabeth was by the *reeve* and
 Reeve. *burgesses*.

In the 27th year of Queen Elizabeth, a suit was commenced in the Exchequer Chamber, by the *portreeve* and *burgesses* of the borough of Looe, otherwise East Looe. In the bill it is stated that it had been time out of mind an ancient borough, and charged to send burgesses to Parliament; and that the *inhabitants* were at continual charge to support the port and a weekly market. That the rents and profits of certain burgages in the borough had been applied in supporting the town. But it is alleged that the defendant, Francis Courtney, Esq., and one Walter Vahan, had procured letters patent of the queen, dated the last day of October, in the 21st year of her reign, containing a lease of the market and fair within the town, and of all courts, the burgages and the franchises belonging to it, for 21 years:—by colour of which they offer weekly disturbance to the *inhabitants*. In the answer the defendant denied that East Looe ever was an ancient borough; or that it was charged lawfully to send burgesses to Parliament. But he confessed it to be true, that of late he had heard, rather by usurpation, than by any lawful right or authority as he thinketh, burgesses have been sent to divers Parliaments for the town. And he is induced so to think, for that he never could learn, know, or ever did see, any letters patent concerning the incorporation of the said town or village—or that it is or ever was incorporated by the queen, or any of her predecessors.—All of which seems to be most correct, as there appears no ground for supposing that it had then ever been incorporated.

Two years afterwards, in the 29th of Elizabeth, the queen granted them a charter:—which, notwithstanding the above statement, recites that it was an ancient borough, and that the *men* and *inhabitants* had (as in the charter to Poole) enjoyed many rights and liberties *by prescription*.

The charter, in other respects, so much resembles others of this period, that it is unnecessary to extract it, further than to observe, that it is an incorporation of the *inhabitants*, with the ordinary corporate powers—appointing nine capital burgesses, who were to be *inhabitants*, and to form the common council. It authorizes the place to return two members

Elizabeth.

Portreeve.

Borough.

Inhabitants

1587.

Men.
Inhabitants

Corporate.

Elizabeth. to Parliament, who are directed to be elected by the common
1587. council.

But that provision was, in fact, never acted upon, as the election never was made by that body—a strong circumstance to show that the *charters of the crown had not*—as was decided in the Chippenham case—*any power to control the election of members to Parliament.*

All the officers appointed by the charter are described as *inhabitants*:—and in the clause for the annual election of mayor, it is provided that the mayor and capital burgesses shall nominate two *men* before the other persons *inhabiting* the borough, that they may elect one of them to be mayor. It seems impossible to resist the inference which arises from this and other similar clauses, that the *inhabitants* were the *burgesses*; as the tenor of the clause, and the course of the election, seems evidently to lead to that conclusion.

In the clause which relates to the vacancies of capital bailiffs, it speaks of those who should die or *inhabit* out of the borough—words so cogent to show that mere inhabitancy out of the borough was sufficient to put an end to the office of capital burgess; that were it not for the Truro case, to which we have before referred, we should have thought it impossible that any doubt could have existed on that subject.

It is certain that death would create an absolute vacancy;—and it is strange that the other alternative—couched in language distinct and intelligible—should not be treated as being equally absolute.

Strangers. *Strangers* and *sojourners* are mentioned in the charter, as contradistinguished from the *burgesses* and *inhabitants*.

Burgesses. In the clause which provides for the exclusive jurisdiction of the borough it is enacted, that no *burgess* or other *inhabitant* should implead other *burgesses* or *inhabitants* out of the borough.

Here, by a strict construction of the words, the *inhabitants* might be said to be a distinct class from the burgesses; but there can be no difficulty in giving to both these words, in the disjunctive, their full meaning—as the term “*burgess*”

would apply to those fixed and permanent inhabitants who had been duly *enrolled* and *sworn* at the court leet; and the “*other inhabitants*” would be those, who not having lived 40 days in the borough, had not become recognized inhabitants there—no court having occurred since their coming into the borough, at which they ought to have been *enrolled* and *sworn*. And yet the privileges given by this clause should be extended to them, otherwise the sheriff would be driven to execute his functions within the borough.

Elizabeth.

1587.

That such is the proper construction of this clause, and was the meaning the capital burgesses themselves affixed to them at that time, appears from the *bye-laws* made in pursuance of this charter; for the seventh bye-law, in furtherance of this clause, provides generally, that “no *inhabitant* shall sue any other *inhabitant* out of the borough.”

The book which contains the above bye-law, commences with the recital, that the queen had been pleased to make the borough of East Looe a town *incorporate*, and a body politic;—(a strong admission by the burgesses themselves, that they were at that time first incorporated); and to incorporate the *inhabitants*;—giving power to the mayor and nine principal *inhabitants* to make bye-laws.—That the charter being accepted, they made the bye-laws accordingly for the rule of the borough and *commonalty*, which provide for the necessary absence of the capital burgesses on any special business;—subject all aliens or strangers, inhabiting out of the borough, to certain tolls—and the townsmen and inhabitants to other payments;—one of which is, that every person inhabiting within the borough shall pay towards the relief and provision of the *poor*, besides the weekly contribution, such sum as the mayor and principal burgesses shall assess. Provision is made that no inhabitant shall take into his house to dwell, any *stranger* not before dwelling in the same, without the consent of the mayor and the capital burgesses, upon pain of five pounds, or departing again within one month.

Incorporation.

Bye-laws.

Aliens.

Strangers.

This bye-law, as it stands, is reasonable enough:—as it

Elizabeth. prevents any person from living in the town, and becoming
 1587. chargeable to it, without the consent of the mayor and principal burgesses. Which, as a mere protection to the town, could produce no injury; but if the meaning of this bye-law was carried so far, as to extend to persons not strangers, and treated as giving to the mayor and burgesses the power of *excluding* from the borough, or its privileges, any of the *inhabitants*; or of *admitting* any persons into the town against the wishes of the inhabitants—it would be contrary to reason and law.

That part of the bye-law which prohibits the harbouring persons for more than three nights, without giving notice, is merely in affirmance of the common law.*

There are also other bye-laws, distinguishing the *inhabitants*, and persons dwelling in the borough from *strangers*.
Inhabitants The *steward*, the *court day*, the *law day*, and jury, are all
 Leet. mentioned:—evidently referring to the court *leet*; which it appears was, during this reign, held within the borough. Again, others, referring to the performance of personal duties,—which, by the old law, would have come under the
 Lot. term of “lot,”—impose penalties upon any person appointed by the mayor to work about the business of the town,—or summoned to come, or appear before him;—or chosen to fill any office, and refusing or neglecting to do so. The
 Town Stock. “*town stock*” is expressly mentioned;—and it appears, subsequently, that all the incomes or fines, paid on the admission of burgesses, were to be carried to the town fund; as well as the produce of the town-lands, &c. And any inhabitant *departing* from the borough, and not returning within six weeks, was to lose his freedom—excepting seafaring men.

1587. There is a deed in the 29th of Elizabeth, a few months
 Deed. only after the charter, made between the mayor and eight others, described as *principal burgesses* there, as well for themselves as *for all other the burgesses and inhabitants* of the said borough of the one part; and certain lessees of the

* See Bracton—the Mirror—Britton—Glanville—and Fleta; and before, p. 482, in the notes.

other part; by which the mayor and principal burgesses demise for lives certain lands at Shutta—a place near the town. Elizabeth. 1587.

It should be observed that this deed, although after the charter, is made with the consent of *all* the *burgesses* and *inhabitants*; and shows clearly that the common council were not competent to convey the property of the borough without their consent.

In the following year, the first return subsequent to the charter is made of two members, elected for the *commonalty* by the mayor and *burgesses*, by the unanimous assent and *common consent*; and is under the common seal. 1588. Return.

In the 30th of Elizabeth, the mayor and capital burgesses together, with the unanimous assent and agreement, as well of themselves, as of *all other the burgesses and inhabitants* of the borough, in consideration that one Philip Morgan, at his own charge, had newly built upon the ground of the *burgesses and inhabitants* a certain house, granted the same to him. And there are also many other leases in the same terms. Leases.

James I., in the first year of his reign, granted another charter to East Looe, which, in the introduction, recites the charter of Elizabeth, and states,—that the professed object of the charter was, to remedy some defects in the government of the town:—that the mayor and *free burgesses* had informed the king, that some of the capital burgesses who were elected mayor had often refused to take upon them that office; whereby the government and rule of the borough, which was then become a populous and large sea port town, was interrupted, to the great disturbance of the king's peace and rule of the town:—and that the *burgesses or inhabitants* entertained disorderly persons, frequenting the same port.—Wherefore the mayor and free burgesses prayed the king for reformation of the premises.—And the king, for the keeping of the peace, and the government of the borough and his people there *inhabiting*, and resorting thereto,—granted a penalty of 5*l.*, and imprisonment till payment, upon any person chosen and refusing to serve the office of mayor: 1623. 21 Jas. I. Charter.

Burgesses
or inha-
bitants.

Elizabeth. And that if any of the *burgesses* or *inhabitants* should com-
 1623. mit any offence for which by the law of England he ought to
 Disfranchisement. lose the liberty and privileges of the borough aforesaid, then
 it should be lawful for the mayor and capital burgesses to
amerce, exclude and expel such persons from all and sin-
 gular the offices, liberties, privileges and immunities of the
 borough.

Justices. It also granted, that the mayor, recorder, and last mayor,
 should be *justices* of the peace within the borough.

Confirmation. These were the principal objects of this charter; which,
 however, concludes with a confirmation to the mayor and
 free burgesses of all the franchises, liberties, exemptions,
 and jurisdictions which they then had, or which their pre-
 decessors, by whatsoever name of incorporation had there-
 tofore enjoyed, by pretext of any royal charters or letters
 patent, or in any other lawful manner, right, custom, *use or*
prescription theretofore used, or accustomed; although the
 same had been abused, discontinued, forfeited, or lost.

Freemen. In a bye-law subsequent to this charter, the "*freemen*" are
 mentioned:—a term, as appears from many of the documents,
 then newly introduced into the borough;—which it is mate-
 rial to note, inasmuch, as the burgesses must always have
 been by the common law, freemen, or *liberi homines*;—but
 as that qualification was necessarily implied by the law,
 it was not requisite to be mentioned. However in this
 Buying and selling bye-law, relative to the freedom of *buying* and *selling*—with
 which we have seen about this time the term became con-
 nected—it was reasonable enough that the appellation of
 "freeman" should be introduced, and the records of this
 borough afford a striking instance of the double meaning of
 this term, as the *free burgesses* occur in them at the same
 period, and are entered, as well as *freemen*, in the same
 year.

Borough books. East Looe continued to return members till the pro-
 tectorate of Cromwell, when *one* only was directed to be
 sent for that borough and West Looe.

The books of this borough shared the fate of many others;
 and all prior to the restoration of Charles II. were destroyed.

The oldest commences in the 16th year of that reign. They Elizabeth. contain, amongst other things, the proceedings at the court 1664. leet, at which the lists of the capital *burgesses*, *free tenants* Leet. and *resiants*, are included; as in the books of West Looe. But they cease after the 29th of Charles II. for 30 years.

It appears, that the election of mayor was made by the "commons," who we have seen before were the *inhabitants*. Commons.

In the 22d, 27th, 29th, and 34th of Charles II., persons were presented for *living* in the town without acquainting the mayor, *not being freemen*, and *not giving security*.

These presentments at the court leet are important, as showing the real nature of the duty of the jury at that court. Leet. Vagrancy was strongly prohibited, as we have seen, by our law from the earliest time;* and persons were not allowed to go from place to place for the purposes of residence, without giving due notice of their being there;—a duty which was also incumbent upon the housekeeper with whom any such person might take up his abode. And as the borough was liable to an action if they entertained or harboured the fugitive villain of any lord; so also were they liable if any offence was committed within their limits; or if any of the burgesses offending were not forthcoming to answer to the law: hence in this case the jury present the omission of this person, in not giving due notice of his coming into the town; or giving security or pledges for his good behaviour, and to be forthcoming if any thing was alleged against him.

At a *law* court, with *view of frankpledge*, and session of the peace, holden on the 25th of October, in the 35th of Charles II., there is in the borough-books an entry of a presentment of a person for living in the town; and also of two others for not paying their *incomes*. 1683.

And also the following:—"Ad hanc curiam venit Henricus Trelawney ac ex assensu majoris et capitalium burgensium et *liberorum hominum* burgi predicti admittitur et juratur *liber homo* burgi predicti."

* Vide ante, p. 8, 14, 15, 25, 31, 623, 1146.

Elizabeth. Entries are also made in the books of persons who had been bound as *apprentices*.

Appren-
tices.
1679.
Return.

The return of the 31st of Charles II. is made by the mayor and burgesses; and is signed by 63 persons; 38 of whom are found in the *resiant list* of 1677, leaving 25 unaccounted for; who probably were inhabitants not enrolled; but who had come into the town after the making of the list in 1677. They some of them appear to have been admitted as free burgesses after the making of that list, and five of them had been presented at the court in 1677, for not being freemen.

1684.
Surrender.

In the 36th of Charles II., Lord Bath obtained from East Looe,—as well as from many other boroughs—a surrender of their charter, upon a request of the burgesses for the grant of a new one.

Hume however states, that the king died before Lord Bath reached London with the surrenders.

The deed by the corporation is dated the 20th October 1684. On the 9th January following, petitions were made through the Earl of Bath, lieutenant of the county of Cornwall, on behalf of the boroughs of Bradninch—Penryn—Liskeard*—West Looe—East Looe—Truro—Plympton—Grampound—and Tregony—praying his majesty to regrant to the respective corporations their charters which they had surrendered; with such alterations as his majesty should think fit. The original petitions are not to be found; but an entry to the above effect is in a book in the State Paper Office.

King Charles died the 7th of February following:—and the surrender was only recorded on the 19th day of *March* 1685,† in the first year of the reign of James II. So that a lapse of five months took place between the making and recording of the surrender. Added to which, the surrender

* See *Pyper v. Dennis*, Holt's Reports, 170; where the Liskeard surrender, and the charter granted by James II., were both held to be void.

† By the Old Style, the year 1684 began 25th March. The surrender was made the 20th of October, and the petitions were presented the 9th of January 1684-5. King Charles died, and King James ascended the throne the 7th of February following, 1684-5, and the surrender was subsequently enrolled on the 19th of March in the same year.

was made to King Charles II.;—but the same was, not ^{Elizabeth.} recorded till after his death, and in the reign of his successor. This case, and that of Marlborough, are precisely similar to ^{Marlbo-} the one relative to Liskeard, which was decided in *Piper v. Liskeard.* ^{Liskeard.} Dennis, where the surrender and the charter of James II., were set aside;* and also to the Totness case, in 1695, where ^{Totness.} the *right of persons to vote who had been made free by a charter of James II. was negatived.*†

James shortly after ascending the throne, determined upon summoning a new Parliament; but in order the better to secure the election of those persons over whom he had the greatest influence, he determined to grant new charters to the boroughs which had executed surrenders. The Parliament was summoned to be held the 19th day of May, and on the 28th of March preceding the king granted a new charter to this borough. Before we state its contents, it will be proper to observe, that previous to this time none but *inhabitants* were admitted as burgesses; and that *all* the ^{Inhabitants} inhabitants presented by the jury at the court leet as fit persons to be burgesses, were duly sworn as such. But immediately after the granting of this charter, many persons of rank and fortune residing in the neighbourhood were ^{Non-resi-} admitted:—as ^{idents.}

Sir John Trelawney, Bart.	}	Freemen.
Charles Trelawney		
John Arundel		
Francis Kelly		
John Kelly		

And John Oben was made alderman.‡

As to the validity of the charter the following authorities are material.

The surrender being part of the consideration, if it is void the charter is void.§

* Holt's Reports, 170, and 12 Mod. 253.

† A charter granted by James II., in this same year, to the borough of Totness, was held void by a committee of the House of Commons in 1693.

‡ He was afterwards removed on the coming of Will. III., vide post.

§ 1st Coke, 43, case of Alton Woods.

Elizabeth.

For it will be taken that the king was deceived in law;* and when he is deceived, or mistaketh the law, or there is a mis-recital in the charter, the grant is void,† for it is the duty of subjects to see that the king is truly informed.‡ And this principle of the English law prevailed in some degree amongst the Romans. At least the Emperor Gratian is said to have declared, that "if a person should so far impose upon the emperor as to obtain a rescript, giving him an exemption from the *indiction*, it should be of no avail."§

And if the king's grant does not agree with the law, the grant is void.||

Now the surrender to Charles II., not having been enrolled, was void;¶ and consequently the charter granted in consideration of it could be of no effect, for the king was misinformed,** that the former had been surrendered, and therefore was deceived. And if this charter were not held to be void, the former not having been surrendered, there would be two charters giving different rights to different persons existing in the same borough at the same time; which the law will not allow, as likely to beget suits and troubles.††

1685.
Charter.

But to return to the charter:—it stated the surrender; and that the king, graciously affecting the bettering of the borough, and that for ever thereafter there might be in it a certain manner for keeping the peace and good government of the people there; and that it might be a borough of peace and quietness, for the rewarding the good, and for the terror of the evil; and that peace, and justice, and good will there, might be the better done and kept; and hoping that if the *burgesses* and *inhabitants*, and their successors, should be able by the king's grant to hold and

* 1 Co. 43, and 18 Eliz. Dyer, 352.

† See *Legat's Case*, 10 Co. 109; and the *Earl of Rutland's case*, 8 Co. 109. *Lord Chandos' case*, 6 Co. 56, 2 Dyer, 195; *Kempe v. M'Williams*.

‡ *Ib.* 53.

§ *Cod. Theod.* i. 2. 7.

|| 18 Hen. VIII., Bro. 104; tit. pat. *Lord Lovell's case*.

¶ *Rex v. Osborne*, 4 East, 327.

** As in 1 Co. 52.

†† See 1 Co. 50.

enjoy larger liberties and privileges, they might think themselves more strongly obliged to him and his successors : Elizabeth.
1685.
in consideration that the mayor, burgesses, and *inhabitants* had granted—and in the Chancery in due manner had delivered into the king's hands, and surrendered up their charters, messuages, &c., and privileges and immunities, which surrender the king had accepted : and at the request of John, Accept-
ance.
Earl of Bath, lord lieutenant of the county of Cornwall, the borough was declared to be a free borough of itself, and Free bo-
rough in-
corporated
the *inhabitants* thereof were incorporated by the name of "the mayor and free burgesses," with the usual corporate powers.

That there should be 12 *men* of the better and more substantial burgesses *inhabiting* within the town, who should be called aldermen, or chief burgesses ; and to be the *common council*. Common
council.

That one of the aldermen or chief burgesses should be mayor ; and one honest and discreet man, learned in the laws of England, should be recorder. Mayor.
Recorder.

That one discreet man, by the nomination and appointment of the recorder, should be town clerk of the courts within the borough. Town
clerk.

And that the mayor and free burgesses and their successors, by their common council, might make reasonable bye-laws. Common
council to
make bye-
laws.

A clause for the election of members of Parliament, similar to that of Elizabeth, excepting that it expressly confined the right to the free burgesses "*only*," is then introduced. The mayor, the justices of the peace, the coroner, the clerk of the market, the keeper of the prison are named ; and 12 persons, described as *inhabitants*, for aldermen ; and, unlike the charter of Elizabeth, 36 are named as the *free burgesses*. The recorder, deputy mayor, and town clerk, are also appointed. And in the clause for the election of mayor, one out of the two nominated by the common council was to be chosen by the *burgesses*, instead of the *inhabitants*, as in the charter of Elizabeth.

The other clauses of the charter are similar to those of

Elizabeth. Elizabeth, excepting that greater power appears throughout
1685. to be given to the common council.

There is then added the following clause, for the admission and swearing of freemen, which was not inserted in either of the previous charters; and which gave to the common council the arbitrary election of such burgesses as they might think fit; with an express limitation that they "*only*" should be the freemen.

Election
of bur-
gesses.

"That it should be lawful for the *mayor, recorder, and aldermen* (whereof the *mayor* and *recorder*, or their deputies, to be two) from time to time, and all times thereafter for ever, when and as often as it should seem to be fit or necessary for them, to name, elect, and make so many and such persons *only* to be *free burgesses*; and of *such sort and quality* as to them shall seem good. And that *no other burgesses* should be accounted to be a burgess, except the burgesses in those presents before expressly named; and he or they, which by election of the mayor and recorder, or their deputies, and the rest of the aldermen or major part of them in such manner and form aforesaid, should be elected, admitted, and sworn."

This provision, that no other persons but those elected in the manner directed by this clause, should be esteemed and reputed burgesses, as well as the word "*only*" introduced, as before observed, in the clause for the election of members to Parliament, afford a strong inference that this new charter of James II. containing, as it does, a clause for the amotion of the chief officers by the king in council, was intended to exclude all burgesses but those approved of by the king, as they were to be elected by the chief burgesses, who were removable at the pleasure of the crown. And these provisions taken together, seem strongly to import that they introduced into the borough a new system, different from that which existed under the former charters—for no such power was contained in them. And by a subsequent clause the mayor, aldermen, and recorder, were to be *removable by the king at pleasure*. The new aldermen were only to be elected in the presence of the recorder, or his

deputy. The mayor, aldermen, and recorder—being in the power of the crown—were to name the new burgesses, without any restriction as to birth, apprenticeship, or residence. The majority of the aldermen, also, had not power to elect, unless the mayor and recorder were present; so that *the king, by executing his power of amotion, could obtain what free burgesses he pleased.* Elizabeth.
1685.

As to the clause for the amotion of the officers at the will of the crown, in the case of the King *v.* Amery,* Mr. Justice Buller cited the dictum of Lord Hardwicke, that “the charters of those times *had never been countenanced in Westminster Hall*, and he would *not* give an opinion in support of “them, *unless the strongest evidence in the world was laid before the court, of their being uniformly acted under ever since.*” And Lord Hardwicke added, that all the charters of that time had been since exploded.†

In the same case, Mr. Bearcroft speaks of the clause of amotion as “the detestable part of the detested charter.”‡

This grant was never enrolled,§ nor indeed is there any warrant to be found among the state papers, authorizing it to pass the great seal.

From comparing this with the former charters, it will appear that the real object of procuring these surrenders by the Earl of Bath was, that new charters might be granted, with such clauses of election and amotion, by means of which the king might control the elective franchise.

All arts were used to manage elections, so that the king should have a Parliament to his mind; and complaints were transmitted from all parts of England of the injustice and violence used in the elections, beyond what had ever been practised in former times.||

* 2 T. R. 158.

† See Palmer, 501; Sir W. Jones, 168; 2 Rolle's Abr. 164; 2 East, 533; 1 Rep. 436; 5 Rep. 55, 56; 2 Ander. 156; 2 Freem. 17.

‡ See also Serj. Adair's speech, 183, 205, 210, 272; same case. Mr. Erskine's argument, 276, 290; Plumer's argument, 374, 375, 386, same case: 2 Special error, 389, same case; Serj. Adair's argument, 440, same case; Mr. Erskine's argument, 446, 449, 450, 467, same case; Adair's reply, 528, 529; Baron Eyre's judgment, 568; see also appendix to same case, No. 38.

§ See 4 Inst. 245 and 87; 1 Co. 45, case of Alton Woods, Sid. 4; 1 Vent. 142.

|| 1 Burnet, 625.

Elizabeth.

1685.

In the new charters, the election of members was taken from the *inhabitants*, and restrained to the members of the corporation—all those being omitted who were not acceptable at court. In some boroughs they could not find a number of men to be depended on, so that the neighbouring gentlemen were made the corporation men; and among some of these, persons of other counties, *not so much as known in the borough*, were named. This was practised in the most avowed manner in Cornwall, by the Earl of Bath; who to secure himself as groom of the stoles, a place which he held all King Charles's time, inserted the names of the officers of the guards, in almost all the charters in that county; and having the privilege of electing 44 members, they were for the most part so chosen, that the king was sure of their votes on all occasions.*

The return to this Parliament from East Looe was of the Honourable Charles Trelawney, of Trelawney, in the county of Cornwall; and William Trumbull, of Doctors' Commons, London, knight. It was made by John Mott, gent., the mayor, and the aldermen and free burgesses; but signed by the mayor only, with the common seal attached. Thus it is apparent that the corporation accepted, and began immediately to act under the new charter, and the first fruits were the nomination of Trumbull—a professed courtier.

1687.

The Parliament assembled for the last time on the 28th April 1687, and shortly afterwards the king dissolved it; intimating that he should have a new one before winter. He then resolved upon making a progress through the western counties, which he effected; but was received so coldly as to be disgusted. When he returned, he resolved to change the magistracy in the several cities; who went boldly

* "These methods were so successful, that when the members were all returned, the king said, there were not above forty members but such as he wished: for most of them were furious and violent courtiers, and seemed resolved to recommend themselves to the king by putting every thing in his power. This gave all thinking men a melancholy prospect.

"All people saw the way for packing a Parliament. A new set of charters and corporation men, if those now named should not continue to be compliant, was a certain remedy to which recourse might be had. Of this Parliament it was said, that in all England it would not have been easy to have found 500 so weak—so poor—and so devoted to the court as those were." 1 Burnet, 638, 639, 667.

to work, and took their measures so hastily, that men were appointed in one week, and turned out the next. A long list of orders of amotion may be seen in the council book of James II., beginning with Chester. Elizabeth.

King James had scarcely issued these orders, and procured the removal of the officers, when he received a letter from the Marquis of Abbeville, his minister at the Hague, which informed him with certainty of an intended invasion by the Prince of Orange. The course he took in his alarm, proves to what he thought the disaffection was to be attributed, for among other concessions, he replaced in all the counties the deputy lieutenants and justices; and on the 17th of October 1688, published a proclamation, entitled, "A proclamation for restoring *corporations* to their ancient charters, liberties, rights and franchises." Proclamation. This proclamation has been so much commented upon, that it is not thought necessary to set it out here at length, but to refer to an accurate printed copy as set forth in 2 Luders, 260. It will be sufficient to mention, that it purported to restore the old charters, where the surrenders had *not* been recorded; and in cases where surrenders *had* been recorded, as in Thetford — Nottingham — Bridgwater — Ludlow — Bewdley — Beverley — Tewkesbury — Exeter — Doncaster — Colchester — Winchester — Launceston — Liskeard — Plympton — Tre-gony — Plymouth — Dunwich — St. Ives — Fowey — East Looe — Camelford — West Looe — Tintegall — Penryn — Truro — Bodmin — Hadleigh — Lestwyshall — and Saltash, the king ordered that new charters should be granted, free of expence.

Having shown King James' opinion of these garbling charters, it will be proper to see what William III, thought upon the same subject.

Preparatory to his landing, he published a proclamation, wherein, after referring to the surrenders and new grants, and other acts of tyranny, he says,* "therefore it is that we have thought fit to go over to England; and we now think fit to declare, that this our expedition is intended for no other design, but to have a free and lawful Parliament as-

* 8 Hume, 292.

Elizabeth. 1688. sembled as soon as possible; and that in order to this, all the late charters by which the election of *burgesses* is limited contrary to the ancient custom, shall be considered null and of no force. And likewise, all magistrates who have been unjustly turned out, shall forthwith resume their former employments; as well as all the *burgesses* of England, shall return again to their ancient prescriptions and charters."

We find entered in the books an order for removing out of the town of *East Looe*, Philip Stephen, mayor and *alderman*; Thomas Blight, Henry Eager Hawkey, Philip Hicks, *aldermen*; and Thomas Oben, town clerk and *alderman*.*

It should be observed, that Trelawney, the bishop of Bristol, was one of the seven bishops tried for contumacy, and confined in the Tower, which demonstrates his being at variance with the king; which probably was the occasion of its being thought necessary to remove the persons best affected to the Trelawneys.

The bishops were acquitted on the 17th of June, and the order of amotion was on the 12th of August.

In the mayor's accounts are the two following items, which show what the feelings of the *inhabitants* of East Looe were as to their liberties.

"Paid for ringing when the good news came, when the bishops came out of the Tower, 2s. 6d.

"Paid for ringing when King William and Queen Mary were proclaimed, 1s."

It must here be observed, that James II. by his charter, to which we have so recently referred, granted new and extraordinary powers to the select body of the capital *burgesses* or common council; destroying the original constitution of the borough, and taking away the ancient rights of the *inhabitants*. That unhappy monarch resorted to these measures for reasons we have before given. And having some of his supporters living in East Looe, they also promoted as far as they could, the projected scheme of interference. For we find by the same books, that immediately

* See his election, before, p. 1258.

after the granting of the charter, the new corporation commenced their operations under it, in order to effect the designs of the government, and to drive the *inhabitants* into a compliance with their wishes. They made a bye-law for the payment of customs in the town, reciting the charter, which states, that the mayor and free burgesses should have power to make laws for the good rule and government of the burgesses and *inhabitants* of the borough aforesaid for the time being, and for declaring how the officers, burgesses, artificers, *inhabitants* and *resiants* of the boroughs should behave themselves in their offices, and businesses with the borough; and otherwise for the further public good and utility, and good rule of the borough, and the victualling of the same. But the bye-laws are stated to be made by the mayor and magistrates of the borough—as in Colchester they were by the “*bench*.”—and it was directed, that no act could be done but by the consent or order of the magistrates. Even the town-lands, which, in the days of Queen Elizabeth, the corporation did not think themselves competent to grant on lease without the consent and agreement of the *inhabitants*, could not now (so completely was the system changed) be contracted for, but by the consent of the mayor and magistrates.

Elizabeth.

1688.

Bye-laws.

Magistrates.

It may also be justly observed, that the surrender of the charter of this place, the grant of a new one, and the assumption of power by the select bodies, were by no means isolated facts which related to this place alone; but they were part of a system which spread over the whole kingdom.*

The following is a copy of a petition addressed to King William and Queen Mary by the *inhabitants* of East Looe, immediately after the abdication of James II.; what the immediate result was, is not now known, as nearly all the records of East Looe have been destroyed by those who were opposed to the rights of the inhabitants.

Petition.

“The humble petition of several of the ancient and most able burgesses, freemen and *inhabitants* of the borough of East Looe, in the county of Cornwall.

* 8 Hume, 178. 181; 1 Burnet, 527. 625.

Elizabeth. "Most humbly sheweth,—That the town and borough

1688. have not only several rights and privileges by prescription, but also several rights and franchises granted by several charters of Queen Elizabeth and King James I., by which it was granted, that every mayor and capital burgess should be an *inhabitant*, and should *dwell* within the town; and in case of his removing or discontinuing in the town, that a new person should be chosen in his place; and commissioners in such case had been appointed to see the same done, and to swear a new mayor. That in the end of the reign of King Charles II., and by the violence of those times, the charters were surrendered, but without the consent of the *major part of the freemen* of the town; and a new charter was thereupon obtained, it being then given out, that the king had given the borough to some private person, and thereby several persons were named magistrates (and now continue so) *who never were inhabitants*, or elected magistrates of the town, *nor were they inhabitants now*. The present mayor (Mr. Reynald Hawday) *never living within eight miles of the town*; and the last standing mayor (Mr. John Oben) being also *no inhabitant* there; and being attornies at law, have lately sworn so many *strangers freemen*, and but lately *five clergymen* at one time, and *refused to swear able inhabitants unless they would promise their votes*, (as can be proved.) That the benefit of the government of the town is gotten mostly into *strangers' hands*, and the burden thereof lays on the petitioners; and the greatest part of the other magistrates continued, who are so poor that many of them have been prisoners for debt, and pay no taxes. All which doings are contrary to the charters, and your petitioners' ancient rights and privileges, and the government in general. By which means and oppressions several *inhabitants* of the town have sold their shipping, and have left the town, and others will be forced to do the same; and the customs of the town, which of late years have yielded 1,500*l.* per annum to the crown, yield not now 50*l.*

"The petitioners most humbly pray, that the town and borough may be *restored* to their ancient charters and

government according to law; and that the said Mr. Reynald Elizabeth.
Hawday (the present *pretended* mayor), and the said Mr. John 1688.
Oben, (the last *pretended* mayor and justice of the peace,
being *no inhabitant* of the town,) may be ordered to surcease
their office, being never elected magistrates, and being *dis-*
abled to be so by the charter. And that the petitioners may
be relieved in the premises in such manner as to the king
should be thought fit."

There is a return for this year of two members, made by 1689.
the *mayor and burgesses* under the common seal, and is signed 2 W. & M.
by 43 names "*cum aliis*." This is the first return after the Return.
surrender of the charter made to Charles II., the legality
of which was disputed by the *inhabitants* in the third year
of the reign of William and Mary; and after the charter
granted by James II., which being founded upon the void
surrender, was in fact itself void.

John Dyer, William Elsdon, and Robert Doble were sworn 1693.
freemen;* and the said John Dyer then paid for his 5 W. & M.
admittance, or inhabitance, in the borough. This particular
species of presentment, as well as others subsequent of the
same description, were probably to be attributed to the then
state of the *poor laws*, and the statute of the 23rd and 24th
Charles II.

After this charter, appears a list of the free burgesses,
many of whom were esquires, the greater part strangers to
the borough.

However, presentments of persons for inhabiting in the
town without leave frequently occur, and the distinction be-
tween the burgesses, freemen and *strangers* is marked
throughout the entries in the book, and the bye-laws:—and
free burgesses and *freemen* are both admitted. As late as the
12th year of William III. it appears that the *law-court* days, 1700.
or court leets, were still held; and the jurymen and con- Court leet.
stables elected there. The same is continued down to 1743, 1743.
when the entries in the books cease.

* Before the admission seems to have been of free *burgesses*—here it is of
freemen.

Elizabeth. The free burgess or freeman's oath of this borough, will show, in some degree, the nature of the privilege—the connexion it had with the municipal government—and the obligation of paying *scot* and bearing *lot*, which was connected with it.

Scot and lot.

Oath. “I, A. B. being now admitted to the freedom of the borough of East Looe, do swear, that I will be a true liege man, and true faith and truth bear towards his majesty the king ; that I will be aiding and assisting to the mayor of this corporation, and others the officers thereof for the time being, in all things they, or any of them, shall lawfully and reasonably require me unto ; that I will yield, pay and be *contributory* to and with this corporation as far forth as I shall be reasonably rated and charged ; that I will be obedient to all laws, orders and constitutions already made or hereafter to be made for the better government of this corporation ; that I will not, on any account whatsoever, by virtue or colour of this my freedom, bear out any *foreigner* or *stranger* against the interest, or any the rights and dues belonging to this corporation, or the privileges thereof ; but in all things, to the best of my knowledge and understanding, will endeavour to the utmost of my power to preserve, support and maintain the same.”

1725. In the 11th year of George I., one Ryder again set up the right of the *inhabitants* at large to be burgesses—a struggle which they had before always maintained.

Quo warranto.

And in this year, informations, in the nature of quo warranto, were filed against 38 persons, being inhabitants, for usurping the offices of free burgesses ; against 20 of them, judgments by default were signed—17 others entered disclaimers—and one was not prosecuted.

But it appears by the affidavits, that the usage relied upon for the admission of the free burgesses by the mayor and capital burgesses, was founded upon the void charter of James II.

And as the affidavits upon which the rule was obtained, appear to have been framed for the purpose of supporting

the right of the mayor and capital burgesses to make and admit freemen, which power is given them by the charter of James II., to which reference is also made in the affidavits ; but the information is drawn up upon the charter of Elizabeth, a strong inference seems to arise, that something must have past before the court to satisfy the judges and the litigating parties, that the charter of James was a void charter, and that of Elizabeth the only one which subsisted for the regulation of the borough.

In this year, a petition was presented by Hameline Trelawney, Esq., and Christopher Smith, Esq., one of the common council of the city of London, against the return of John Buller, Esq., and Edward Buller, Esq. 1806.
46 Geo. III.

The numbers on the poll were—

John Buller, Esq.	22
Edward Buller, Esq.	22
Capt. Trelawney	1
Mr. Smith	1

Fourteen persons claimed to vote, and tendered their voices, for the petitioners, as *freeholders* and inhabitants paying scot and lot, and were rejected : as well as 14 inhabitants paying scot and lot.

Of the 22 persons who voted for the sitting members, nine were described as capital burgesses, or freemen, or free burgesses ; and 13, of whom 11 were non-resident, as freemen, or free burgesses.

The single vote admitted for the petitioners, was a *resident* burgess, or freeman.

Subsequent attempts were made to assert the right of the inhabitants to be enrolled and sworn as burgesses, and, as such, to enjoy all the municipal and parliamentary privileges, as well as to exclude the non-residents :—but a committee of the House of Commons put a negative on their right ; and, on the ground of usage, supported that of the freemen non-resident, and arbitrarily admitted by the corporation ; which latter being a power given by the void charter of James II., the usage subsequent to that charter ought not to have been relied upon as founded upon any legal origin, but

1824.
Mandamus.
Quo war-
ranto.
Petition.

Elizabeth. should have been intended, as in the Chippenham case,* to have been by colour of the void charter.

One other fact, for the purpose of showing how matters of burden, and not of privilege, and unconnected with any parliamentary interest, have been left unperturbed in their original state, will close the history of East Looe. The *jurors* at the town court have ever been selected from the *inhabitants* of the borough; for which there could be no pretence, unless they were entitled also to all the privileges of burgesses.

Fowey. 2.—*Fowey*, like the other boroughs in Cornwall, is not mentioned in Domesday; but was a place of considerable importance in the reign of Edward III., having contributed no less than 47 ships for the siege of Calais.

1340. In the 14th year of Edward III., it sent, with Looe, a Council. representative to a *council* at Westminster; but it never otherwise exercised the elective franchise till it was summoned by Queen Elizabeth. James II., King William III. in the second year of his reign, and George III. in 1819, granted charters of incorporation. By the latter, the corporation was to consist of nine of the most honest and discreet free burgesses of the *inhabitants*, who were to be called "aldermen and council of the borough;" and one of them was to be called the mayor.

It was provided, that the mayor, recorder and aldermen might at all times nominate and prefer as many *free burgesses* of the borough as they pleased. One mayor, eight aldermen, a recorder, and five free burgesses were then nominated and appointed. And it was directed, that the mayor, recorder, justices of the peace, and the rest of the aldermen of the borough, should elect from the free burgesses, to supply any vacancies that might arise among the aldermen; and that the mayor, recorder, and their deputies, with the senior alderman and free burgess, should be justices of the peace.

In Hilary Term, 1824,† a mandamus was applied for against the corporation, to compel the election of additional free burgesses, under the following circumstances.

* See Glanv. p. 57.

† Vide Barn. & Cr. vol. ii. p. 584.

It appeared, that since 1821 there had been only six aldermen and four free burgesses; that one of the aldermen, from age and infirmities, was incapable of discharging his duties; that two of the free burgesses were above 70 years of age; and another was not an inhabitant, whereby the corporation was in danger of being dissolved. Elizabeth.

The application, however, was rejected, because it was held, that a mandamus could not be issued to compel a corporation to elect members of an indefinite body.

In Trinity Term 1827, judgment was given against the corporation; *since which period the county magistrates have alone interfered in the affairs of the borough.** 2

From the proceedings which have taken place in Parliament respecting this borough, it appears that the head officer was originally the *portreeve*—which of itself imports, that the place was of some antiquity, as it is a name of pure Saxon derivation. That appellation was however afterwards changed for the title of “mayor.” Portreeve.

In the 12th year of William III., a *petition* of the mayor, recorder, and some of the aldermen and *inhabitants paying scot and lot*, stated, that the right of election was in the *scot and lot men inhabiting within the town*. But that the portreeve had admitted several to poll for the candidate, his nephew, who were not scot and lot men, in violation of the known custom of the borough. Mayor.
1700.
Petition.

In the next year, the matter was investigated, and a report made—in which it is stated, that the right of election was not much controverted. But upon a usage of 50 years, it was decided, that the *right* was in the “*prince’s tenants who were capable of being portreeves of the borough, and in such of the inhabitants as pay scot and lot.*” 1701.

The latter part of this resolution is in conformity with the common law—the former is altogether erroneous, being founded upon the confusion of the court baron with the court leet; for the prince’s tenants were defined to be “such only as had been duly admitted upon the court rolls of the manor,” Right.

Court
baron.

* Vide etiam, Lewis' Topog. Dict.

Elizabeth. and had done their fealty"—which is obviously a substitution for the *admission* and *enrolment* at the *court leet*.

This error, though apparently immaterial, has a tendency to lead to important mischiefs ; as instead of confining the right to the *inhabitant householders*, according to the common law, it admits *non-resident tenants*—affording means, which were not neglected, of dividing the tenements, and by those means controlling the elections.

The greater portion of the freeholds within the borough or manor of Fowey, having become vested in two families, 1765. prior to the year 1765, at a contested election in that year, which was for a single member, only 12 freeholders, or prince's tenants, voted. Before the general election, however, each of those families had conveyed a number of their freeholds to their friends, for the purpose of making 1767. them prince's tenants. And at a court, held in 1767, the steward of the court being in the interest of one of these families, admitted all of them, but rejected all those who claimed under the opposing family. The decision, therefore, of the committee who heard the petition on that election, that such prince's tenants must first do their fealty, disqualified all those whom the steward had rejected, and gave the other family the return.

At first the practice was to make conveyances for the lives of the grantees only ; who, by a separate instrument, declared that their names were only used in trust for the grantor, and to covenant that he should receive the rents and profits. This practice continued, with very little or no variation, till after the year 1790 ; when an opposition was 1790. raised, in the name of the Duke of Cornwall, which gave rise to the case of the *King v. Mein*.* There was a petition to the House of Commons against the return, and a subsequent petition of appeal.

On that occasion it was thought, that the grantees for life only, did not hold of the superior lord of the manor—the Duke of Cornwall, but from the immediate grantor.†

To cure this defect, conveyances were made to the persons

* 4 T. R. 480. † See 1 Watkins on Copyholds, 13 ; and the cases there cited.

to whom estates for life had before been granted, of the reversions in fee—subject and without prejudice to their estates for life. Elizabeth.

In order to secure the beneficial enjoyment of the lands, the persons taking those conveyances, by deeds of a subsequent date, demised the lands to the grantor, for terms of 500 years.

In the year 1795, a compromise took place, relative to the interest in the borough. One of the conditions of which was, that the stewardship of the manor should be granted to the owner of part of the borough for life, by the letters patent of the Prince of Wales.

The court held for the borough and manor was, in the *King v. Mein*,* pleaded as an immemorial or prescriptive court; and Lord Kenyon, in giving judgment said, that it was *not a court baron*, for it is said to be held before the *steward*, or his deputy, and not before the free tenants. The *steward* is the judge of the *court leet*. And from what was said by Lord Kenyon on that case, it appears clearly that it was not a court baron; nor is there any evidence to prove that it was so called till the year 1769; in fact there are records enough extant to show that it was a *court leet*. Court leet.

On the 8th of May 1801, a *steward* of the manor was appointed by deed, who from that time acted in that capacity.

There having been no court since 1812, a *mandamus* was obtained in 1826 to hold one, to which a return was made.

But two courts were afterwards held, at which the proceedings were thought to be irregular, and a rule was obtained for a criminal information to inquire into the alleged misconduct. On the eve of the election, and after the teste of the writ, two more courts were held, but without any *legal notice*. At all these courts the homage rejected every one, who claimed to be presented, with one exception only, unless the claimant was a friend of the candidate for whom they were interested.

Besides the consequences which we have already shown

* 4 T. R. 480.

Elizabeth. of the unfortunate decisions of the committees with reference to this place, it may be material, in order further to prove the intricacy in which, by these means, this subject was involved, to give the following list of objections to voters upon an election petition for Fowey :

Class 1st.—Because at the time of the election the lands in respect of which they voted were not held by them immediately of the lord of the manor of the borough.

2d.—Because the lands had not continued to be held immediately of the lord.

3d.—Because the titles of the several voters to the lands had not been duly presented.

4th.—Because the voters were not duly admitted on the court rolls of the manor.

5th.—Because the voters had not done their fealty.

Class 2nd.—Because the estates in respect of which they voted were fraudulent and occasional, and created for the purpose of giving votes at the election.

1791. A resolution in the 31st year of George III., of a committee under the Grenville Act, decided, that “the *portreeve* should be chosen and presented by a homage jury; and that the tenants were duly admitted by the steward at the court; and that presentment of the homage was not necessary.” All of these circumstances are likewise founded upon the confusion between the court baron and the court leet.

Portreeve. The portreeve, or king’s officer, who was intrusted with the government of the town, could not be presented by the homage jury, who could only have to deal with the rights of the lord, and not with the municipal government of the place.*

Such an officer, if not appointed by the king, would be presented by the jury at the court leet. And the term “*homage jury*” of itself imports an anomalous compound, as the *homage* belongs to the *court baron*, and the *jury* to the *court leet*.

Homage Jury. As to the *admission* and *enrolment* we have observed before; but with respect to the presentment of the homage

Enrolment.

* See *Rex v. Mein*, 4 T. Rep. 480.

not being necessary, it should be remarked, that the *presentment* of a *resiant* at the court leet was also not absolutely necessary before a person was sworn and enrolled :—because he might come voluntarily and do that service ; and if the king's officer knew that he was a *resiant*, he might admit, enrol, and swear him without *presentment*. But to justify any *amercement* for not attending, or not being sworn, a *presentment* was necessary to bring the party into contempt.

The distinction taken as to those capable of being portreeves, is too absurd, as a qualification for burgess-ship, to require a single comment ; and it is unnecessary to add, the still more subtle distinctions made by the committee of appeal in the 59th of George III. To close, therefore, our remarks on this place, it is only necessary to add, that there was no real ground on which it could have been entitled to return members to Parliament :—nevertheless, though summoned at this late period, still, like other places so circumstanced, the right is substantially decided to be in the *inhabitant householders*.

3.—*Cirencester* is not mentioned as a borough in Domesday, and had not returned any members to Parliament before this period, nor does it appear to have been incorporated, although it had a charter from Henry IV., which was afterwards forfeited.* A *court leet* is held annually in the borough, at which the steward of the manor appoints two high, and fourteen petty constables, two for each of the seven wards of the borough.

The election for this place was called in question in the 22nd of James I., before the committee which laid down such constitutional principles with respect to elections.†

But it is strangely reported in Glanville, that this borough had, time out of mind, sent burgesses to Parliament, which considering the numbers of returns still extant, and that those for Gloucester in the same county, are regularly preserved from the 26th of Edward I., and none appearing for *Cirencester*, could hardly be the case. It is stated in the report, that a doubt was conceived who ought to have a voice

* Glanv. 105.

† Glanv. 104 ; 1st Journ. 708.

Elizabeth. in the election; and that the opinion of a serjeant-at-law was taken, who set it under his hand, that he thought only the *freeholders* of the land in the borough ought to have a voice, and at the election it was so agreed.

1624. But the committee determined, first, "that there being no certain custom or prescription who should be *electors*, recourse must be had to the common right, which to this purpose was held to be, that more than the freeholders only ought to have voice in the election; viz. all men, *inhabitants householders*, *resiants* within the borough."* A resolution in strict conformity with the common law:—for the *inhabitants* would, according to the ancient legal term, be "*men of the borough*:"—the *householders* would necessarily pay *scot and lot*:—and the *resiants* would in that character be *admitted, sworn, and enrolled at the court leet*.

It was further decided, that *the agreement* could not alter the law, or make the election by freeholders *only* lawful.

At the court leet which was always held in the borough, the steward and bailiff are appointed, who are the returning officers. In the second year of William and Mary, a resolution was made as to the right of election, in conformity with the law of the leet; viz. that *inmates* had no right to vote. In the 7th year of Queen Anne, there was a decision which referred only to the bounds of the borough; and in the 11th George I. and the 32d George III., the right of the *inhabitant householders* was confirmed.

Thus Cirencester is another instance of a place called upon at this time to return members to Parliament without any legal authority; and the right of election is fixed, according to the common law, in the *inhabitant householders*.

Retford. 4.—*Retford* is not mentioned as a borough in Domesday; but in the reign of Henry III., as we have seen before, there was a grant to its *burgesses*† and their heirs. And in the reigns of Edward I.,‡—Edward II.,§—Edward III.,||—and Henry VI.,¶ charters were also granted to this place.

* Glanv. 107.

† See before, 468.

‡ Rot. Cart. 4 Edward I.

§ Id. 7 Edward II.

|| Id. 3 Edward III.

¶ Id. 4 Henry VI.

James I. gave one of incorporation—under which the borough is governed by two bailiffs, 11 aldermen, a high steward, recorder, and two chamberlains. Retford is also said to have returned members to Parliament, in the 9th Edward II.; but as one member only was returned, and it did not for some time afterwards send any parliamentary representative, the probability is, that it was only to a council. In the fourth of Edward III., the burgesses were excused from sending members on account of their poverty.

Elizabeth.
1604.
Incorporation.
1315.

It appears from the parliamentary journals, that in the 12th of William III., the returning officers were the bailiffs.

1700.
Bailiffs.
1701.

In the year following, the right of election was brought in question; the petitioners insisting, that it was in the burgesses at large, being *freemen*; the sitting member, that it was only in the *resident freemen*; and parol evidence was given of *non-residents* having voted, particularly of one who was stated to have lived out of the town above a year and a day; but he was a soldier, and his wife had been resident. Evidence was also given as to persons not resident having voted in the choosing of aldermen and bailiffs, as well as in the parliamentary elections. And also that one person who had lived above a year and a half “out of the town,” had voted in Charles II.’s time;—a period at which the usages could not be satisfactorily relied upon as evidences of legal right. It was also said, that one person had continued alderman when out of the town.—That must clearly have been illegal.—It was also said, that the non-residents were only excluded by an order of the corporation; which was in every point of view inaccurate:—for by the principles of the common law, as we have traced them from the earliest period, *non-residents* are excluded, as, in point of fact, *not belonging to the place*. If they were legally allowable, the corporation could not by any ordinance exclude them. The truth is, that the order given in evidence was nothing but a declaration of the common law, and an act in pursuance of it;—as we have seen before in Wells—the Cinque Ports—and many Wells, &c. other boroughs.

Non-resi-
dents.

By this ordinance, several persons not resident within the

Elizabeth. borough, were properly disabled from voting at any election
 1701. whatsoever. And it was also legally ordered, that "if any burgess should, at any time, *remove his dwelling* out of the liberties of the borough, and so continue for *one whole year*, he should from thence be disabled from voting at any election whatever." A decree most clearly founded upon the common law.

On the other hand it was insisted, that the non-residents had no vote, and evidence was given for the 46 years preceding, and also of reputation, "that if any freeman was absent for a *year and a day*, (as the common law was,) he lost his right; and one person proved that his vote was denied as non-resident, though he lived but half-a-mile from the town—and another only a quarter." However, the committee, contrary to this evidence, and the declaratory order—as well as the whole tenor of the law—decided, that "the right was as well in the burgesses non-resident as resident"—a more unjustifiable decision, and less supported either by law or evidence, can hardly be conceived.

It is the more unaccountable, since with the exception
 Totness. of the Totness case, in 1695, and the Aldborough (Suffolk)
 1695. case, in 1689, which was afterwards overruled—this appears to be the first decision expressly establishing the right of the *non-resident burgesses*.

The *Totness* case was as unwarrantable as the present, for being mentioned in Domesday as a borough, it was clearly so by prescription, and returned members from the earliest time.

There could therefore, be no case in which the common law right of election and the general obligation of residence, could more strictly apply than to Totness. But the right of 28 persons made free under a charter of James II., similar to the one we have lately quoted of East Looe, was insisted upon: though it appeared that their freedom depended upon the validity of that charter, which rested upon the same ground of a surrender in the reign of Charles II., as in the East Looe case. And upon the authorities there quoted,* it

* See before, p. 1263.

is clear that the Totness charter was also void ; particularly as in that instance it was shown, that after the proclamation for restoring charters, the former magistrates resumed their offices, and those appointed by King James never pretended to act afterwards ; nor could the petitioners prove that the freemen made by his charter, ever afterwards voted or claimed to vote.

Elizabeth.
Totness.
1695.

It is true that on the other hand it was insisted, that though the charter was not valid, yet if those made free, had a right to their freedom, they were well made by persons who were officers de facto, and they showed that some of them were *sons of freemen*, and that others had been *apprentices*.

Sons of
freemen.

The freeman's oath at Totness was likewise given in evidence, whereby they swear, (as we have seen in many other boroughs,) that they would claim and occupy the liberties of the town only such time as they *inhabited* therein.

It was also proved, that Sir Richard Gipps, being at the mayor's, said, " he was commanded by the king to be a candidate, and that if he had but one voice he should sit, for he had as great interest with the king as any man in England, and could procure 500*l.* yearly for the corporation."

The committee properly resolved, that the persons made free by King James' charter had no right to vote for Totness : —but they most improperly decided, that the right was in the freemen not inhabiting, as well as those inhabiting.— A resolution probably founded upon some strong feeling at the time, perhaps connected with the interference of the *king*, as they further decided, that the petition of Sir Richard Gipps, was " vexatious, frivolous, and groundless." And he was accordingly ordered " to be taken into the custody of the serjeant-at-arms, and to make satisfaction to those he petitioned against for the costs of the petition."

Non-resi-
dents.

Under these circumstances it seems clear, that neither the precedent of Totness nor of Retford, as introducing non-resident freemen, can be relied upon with confidence, and the Aldborough decision was afterwards overruled. But in consequence of the resolution of this committee in the East

Elizabeth. Retford case, evidence was given to add to the poll those who had been disfranchised for non-residence.

Totness.
1696.

Appren- Another point was also raised with respect to appren-
tices. tices;—but the right by *servitude* was admitted.

Servitude.

Eldest
sons.

It was also questioned, whether any but the *eldest sons* had a right to demand their freedom. The unfounded nature and absurdity of this doctrine we have before pointed out:—it clearly arises from the source to which we have lately adverted, of confounding together the principles applicable to *tenure*, and *personal* rights and duties:—to the former, the doctrine of primogeniture was applicable, and was administered in the *court baron*:—with the latter, which were regulated in the *court leet*, it had nothing to do: but *every son of a free father was by the common law of England free*. The confusion between the *court leet* and the *court baron* appears in the report of the next year;—for it is said, that the freemen had applied to be made free in the *court baron*, which we have already shown was not the proper court.

Making
freemen.

The method of making freemen, given in evidence, much resembled that of the Cinque Ports, Colchester, Wells, Yarmouth, Lyme, and other places.—In the language of the charters and customals of the Cinque Ports, “they who desired the freedom, came to the bailiffs, and made their request, who bid them acquaint the aldermen with it, and if *approved* at the next *court*, they were admitted to their freedom.” This is altogether consistent with the common law, as we have before explained; and in every respect reasonable in itself, and calculated to secure as well the safety and interests of the town, as the rights of the *inhabitants*: and the best guarantee that the whole would be done fairly and properly, was, that it was *executed in the court before the public*. How the pure spirit of these proceedings was afterwards departed from, will be seen by the sequel.

1701.
Younger
sons.

In a subsequent report in the same year, it is stated that the right was *agreed* to be in the *freemen* or *burgesses*:—the only question being whether the *younger* sons of freemen had a right to demand their freedom. From the form of this

statement, it is clear that the matter was not then fully under-^{Elizabeth.}
stood: the voters are called freemen *or* burgesses, leaving it 1701.
in doubt* which they ought to be. It is certain, from the writ and precept, that they could only be *burgesses*:—and as to *freemen*, they were so by *birth*, *servitude*, or *residence*; but they did not become *burgesses* till they were *admitted*, *sworn*, and *enrolled*;—in this *agreement* as to the right, this distinction is altogether overlooked, and *freemen* and *burgesses* are apparently confounded together.

The old entries which were read from the books on this occasion, and which went back as far as the 13th of Charles I., 1638.
were precisely the same as those we have seen in other boroughs; and in conformity with the evidence stated before as to the mode of making freemen. It is worthy of observation, that in two instances, a father requires that he and his two sons should be admitted at the same time,—the father is sworn, but the oaths of the sons are respited till they become of age. The entries also prove the distinction between *freemen* and *burgesses*, as we have shown above, the *freedom* being spoken of as pre-existing and taken up:—and the party is therefore “*sworn a burgess*,”—one being expressly admitted as free and a burgess.

An entry in the 20th of Elizabeth, was given in evidence, by which it appeared, that a *father compounded* for the freedom of his *first-born* son:—this was adduced to show that the eldest sons had a peculiar right. But on the contrary, the party claims the freedom for *all* his sons:—and *compounding* for the admission of his *eldest* son, does not show that he had any particular right, but only proves that he being the eldest was of age to be sworn.

There was contradictory parol evidence as to the right of the younger sons; and the committee most strangely determined, that the *younger sons* had *not* the right. A determination only to be accounted for, by its being at the same time that the non-residents had been so extraordinarily supported. Right.

* See complaint on this head by Mr. Justice Willes, in the Galway case, Cowp. 509. It is hoped the above statement will explain the whole, and remove the doubt.

Elizabeth. In the further investigation of the votes it appears, *that*
1701. the notion of *freedom* and *burgess-ship* being a *corporate*
Corporate. right was fully asserted; and that by a lawyer; who might
 no doubt be more addicted to that doctrine than others,
 because it altogether commenced with the decisions of the
 law, and was supported by that profession, as the history
 we have traced has abundantly shown. Serjeant Selby
 insisted, that "a person was not legally *disfranchised*, for
 it ought to have been done by the corporation." *Whereas*
 all the evidence went to show, that *admission* and *disfranchisement*
 ought to be in the *court*; and that it was not
 at any corporate meeting—nor the court baron—but the
 court leet.

**Court
leet.
1702.**

The election of Retford was again a subject of inquiry in
 the next year.

The right was *agreed* as before; but the question of quali-
 fication for the burgesses was again discussed.

**Right to
freedom.** It was insisted for the petitioner, that the younger *sons*
 of freemen, and those who had served *apprenticeships*, had
 a right to their freedom; and others *living* in the borough,
 but *not foreigners*, might be made free by redemption.

The sitting member, on the contrary, insisted that only
 the *eldest sons* and *apprentices* had the right; but that the
corporation had a power to make whom they pleased free,
 as well those who *lived without*, as those who *lived within*
 the borough.

**Power to
make free-
men.** In this monstrous and anomalous claim, all the abuses
 arising out of the corporate doctrine are included. The *arbi-
 trary power of the corporation* to make whom they pleased
 free, is openly asserted. The unfounded nature of that
 claim we have shown; and the reader cannot fail to perceive
 how totally such a power is at variance with the general
 principles of our law and constitution. This power extend-
 ing to non-residents as well as residents, in fact places
universal suffrage in the *hands of the corporation*; for they
 might make all the kingdom free of the place; and might
 effectually *control* the *rights* and wishes of the *inhabitants*,
 by the nomination of persons residing out of it:—a proceed-

ing which it is notorious had often been adopted. *A system* Elizabeth. 1702.
so absurd and incongruous could never have been a part of the law of England. Indeed it is clear that it was as contrary to law, as it was to reason. It being so decided in the Hertford case, in Easter Term in the 10th of William III., to which we have already adverted in our history of that borough.* 1698. Hertford.

And in the same term, two years before this case of Retford occurred, a rule was made upon T. Warburton, esq., the late mayor of *Holt* in Denbighshire,† to show cause why an information should not be exhibited against him to show by what warrant he claimed the privilege “to elect and swear *peregrinos*,” “*extraneos*,” anglice, “*foreigners*,” to be *burgesses* of that borough, “without the consent of the bailiffs and burgesses of the borough.” And in the following Trinity Term the rule was made absolute. Afterwards, however, in Michaelmas Term, upon some ground which cannot now be ascertained, a supersedeas was ordered to the writ of attachment upon that information, quia erroneè emanavit. And all further process upon the information was ordered to be stayed until the court should be further moved on the part of the prosecutor. Denbigh.

The report of the Retford committee proceeds to state, that they had first examined what power the corporation had to make *foreigners* free; and parol evidence was given for the petitioners to negative that right. On the other hand it was insisted for the sitting member, that this first had been decided by the former committee; and an order in the town books of the 6th of James I. was produced, which directed that no foreigners should be made free under 20s. fine; and also an admittance to a freedom in the 7th of Edward VI., the person paying 20s. pro libero suo. 1702. 1608. Fines. 1553.
 Both these entries are capable of easy explanation by the principles we have before shown to be a part of our legal history. Persons who had previously lived elsewhere were allowed to come and inhabit in another place, provided

* See before, p. 182.

† Rex v. Warburton, cited 4 Burr. 2261, in Rex v. Breton.

Elizabeth. they were of good repute—could give their pledges in the
 1702. court leet—and were accepted by the people of the place to
 which they came. And such a person would be called a

Foreigners. *foreigner*, because he had not been born, nor had been pre-
 viously a permanent inhabitant in the place. And it was
 both reasonable and customary for such a person to pay some
 Common contribution towards the *common stock* of the place into
 stock. which he was admitted—and in the benefits of which he was
 about to participate—such payment being also some *security*
 to the *inhabitants* of the place, in case they should be called
 in question for any thing which such an individual had done.
This is the true and intelligible ground of these payments,
which would otherwise have been gross exactions on the public.

Thus explained, these entries are consistent with the com-
 mon law; but they in no respect support the point for which
 they were cited.

Non-resi- Parol evidence was also given to show, that non-residents
 dents. had been admitted; which was not to be wondered at after
 the former decision; but that fact could be of little avail,
 unless they were shown to be of an early date; and even
 then they would be open to the explanation given above.

Foreigners. Several *foreigners*, made 17 years ago, were spoken of:—
 1685. but they were in the suspicious time of James II., and their
 admissions were afterwards stated to be, and with reason,
 irregular. On the other hand, in reply, it was shown that
 one of the non-residents who had been admitted was *member*
 for the place:—which was often done in order to meet the
 words of the writ and precept; and which expedient probably
 first suggested the admission of non-resident burgesses:
 which, if it had not been for some such indirect example,
 could not have entered into the mind of any man.

Resolu- The committee properly disregarded the former extraor-
 tion. dinary decision, and, consistently with the common law,
 declared, that “persons *not inhabiting* in the borough were
 Right. *incapable* of being made free by redemption.” And some
 living in *Nottinghamshire*, *Derbyshire*, and *Yorkshire*, who
 were made free soon after King William died, were accord-
 ingly taken from the poll.

Some stated that they had been *summoned* to take out their freedom: and the admissions of many *younger sons* were proved, and that it was the custom for them to be admitted. On the other hand, witnesses were called to negative their right, particularly by showing that they had paid fines; but that fact, well understood, and explained as above, by no means negatived their right. Elizabeth.
1702.

The committee, however, also in this respect, properly decided that "*all the sons* of freemen had a right to their freedom." Right.

So fruitful was Retford of election disputes, that three years afterwards, in the fourth year of Queen Anne, another report was made upon a petition, that the right was *agreed* to be in the "*bailiffs and burgesses, or freemen*"—but the question, as to the qualification for freemen, was again discussed, and the right of making persons *living out* of the borough, and the exclusive privilege of the *eldest sons*, were again insisted upon by the petitioners. The sitting members on the contrary urged, that *all the sons*, as well the younger as the elder, had the right; and that persons having no right to their freedom, could not be made burgesses *unless they were inhabitants*. 1705.
Petition.

The petitioners, to disprove the right of the younger sons, produced the entries of freedom, which stated the claims by the fathers for *all* their sons; but which, as we have observed before, leads to the direct contrary conclusion. Younger
sons.

The petitioners also produced parol evidence to negative their right; and the former resolution of the 17th of March, in the first year of Queen Anne.

It was also insisted, that Retford was a corporation by prescription; which was admitted on the other side; though undoubtedly it was untrue.

The order of the sixth of James I. was likewise proved:— 1608.
but it has been already shown that some parts of that document,—particularly when explained by the general principles of the law, and the practice of other boroughs,—raises an inference against the unrestrained admission of foreigners. That persons *newly coming to inhabit* in the town, and who

Elizabeth. might be properly, and were, called "foreigners," might be

1705. admitted, there can be no doubt. And to such persons this order properly applied, which in the first instance directs,—for the reasons we have given before,—that all made free by redemption should compound for their freedom : and in one instance it has been shown that this was done by an *eldest son*. The order, then, so far from sanctioning the unrestrained admission of freemen, directs that *no foreigner* shall be made free by redemption under 20s.—thereby assessing the fine or composition, which a person *coming to live* in the town should contribute, to the *common stock*—as well as some other usual payments he was to make, including a contribution to the relief of the poor :—and it seems a most extraordinary application of this *restrictive* ordinance to say, that it is a proof of a custom to admit indiscriminately what persons they pleased, whether resident within the borough or not.

1624. It is a still more strange perversion of the evidence, to apply another order of the same reign, but 16 years after, to support the admission of non-residents, for it disabled any burgess from voting who should *remove his dwelling out of the borough*, and continue so for a *whole year*—but provided that if he returned again, he should vote whilst he lived there. For by this mode of reasoning, an order which disabled from voting, on the ground of non-residence—even those who, according to their own system had a clear right to claim their freedom, as sons and apprentices—was applied to justify the general admission of non-residents ; whereas this order was, a truth, in direct confirmation of the common law—taking away all local rights in the borough, on the ground of *ceasing to dwell* there—not on account of temporary

Absence. *absence*, but of absence for a *year*, by which, according to the general law, new rights and obligations would have been acquired in some other place of residence. At the same time providing, that if the party returned and *dwelt* again in the borough, he should then be allowed to vote, for these obvious reasons—that they could not doubt his being a *freeman*, for they had before recognized him as such,

by *admitting* him as a burgess;—and having been before ^{Elizabeth.} admitted, he had paid his *fine* or composition, and had been ^{1705.} *sworn* and *enrolled*—and *dwelling* there again, would of course be again entitled to enjoy all the privileges of a burgess.

How it was possible that an order, thus placing the loss and reacquisition of all rights on the reasonable basis of *actual permanent residence*, could for one moment be suggested as proof of a right to admit *non-residents*, cannot be comprehended, unless the perverse disposition of the human mind, in assuming every thing which tends to support the point sought to be established, is taken into consideration.

They likewise proved some few cases of the officers of the borough being admitted as freemen, though non-residents, as the *steward* and others:—these clearly were excepted cases, and ^{Non-resident officers.} could not be the foundation for any general rule—particularly as a special order was made for one of them to vote, notwithstanding his non-residence—a decision illegal on the face of it; and in truth acknowledging the general necessity of residence. In the instance of another individual who had been made a burgess on the ground of his being one of the members, it was stated that he had never voted till late—establishing, that in his case, though an excepted one, the voting was an innovation.

To answer this and other proofs as to *non-residents*, and also as to the exclusive right of eldest sons, evidence was given—which would seem to be decisive of the point, that *younger sons* had been admitted at the same time, and in the same manner as the eldest sons:—and the resolution in the first of Anne, that *all sons* were entitled, was read.

Parol evidence, as far back as it could go, was called, to ^{1702.} show that non-residents could not be admitted; and the term “foreigners” was explained to mean persons inhabiting in the borough not admitted as burgesses. To exclude the non-residents they also read the resolution on that head in the first year of Queen Anne.

Notwithstanding the general principles and history of our law, so opposite to such an absurd system—notwithstanding the unsatisfactory nature of the evidence on the one hand,

Elizabeth. and the reasonable and satisfactory proof on the other—and

1705. notwithstanding the former decisions to the contrary, the

Right. committee resolved, that the right was in "the freemen *only*," (not the burgesses) "having a right to freedom by *birth* (as *eldest sons*)"—not positively asserting—for after the evidence it would seem to have been too bold to do so—that the eldest sons *only* had the right; but putting them as an instance—"or by serving apprenticeships—or by redemption, "whether inhabiting or not inhabiting at the time of being "made free."

The violence thus done to truth, law, reason, and common sense, must be left to the dispassionate consideration of the reader, without further comment.

On these resolutions being submitted to the House, an attempt was made to correct one of the most objectionable parts of it, by an amendment, leaving out the words "whether inhabiting or not," and to insert the words "being inhabitants within"—but it was negatived.

1708. By another petition in the seventh year of Queen Anne, only three years after, some of the violent and illegal acts resorted to in this borough, and probably produced by these extravagant decisions, clearly transpire—particularly that which was then becoming common throughout the country, namely, the suppression of the *court leet*—*a court more important to the real rights of the people—to the protection of their privileges, and the correction of their grievances; as well as to the due administration of the law—the good government of the people—and the constant preservation of the connecting link between the governors and the governed, than all the other courts in the kingdom.*

Court
leet.

It appears from this petition, that the bailiffs, by the ancient charters, were to keep a court once every three weeks—being the court of review—and on Michaelmas day they were sworn to keep this court according to the custom, and the keys, where the charters and records are kept, and the corporation books, ought to be delivered to the senior bailiff; but William Jessop, esq., a member of the House, the recorder of Retford, had got into his possession the char-

ters and corporation books, and refused to deliver them ; and Elizabeth. 1708.
had displaced his late deputy and not appointed another for keeping the courts, in regard of which the petitioners prayed, that as they could have no redress at law, they might be relieved in the premises, as the House should see convenient.

It not being true, in point of fact, that the parties could not have remedy at law, this petition was rejected.

Two years afterwards, in the 9th of Queen Anne, another 1710.
petition, and a report upon it, occur. Petition.

The right of election was *agreed* as before, to be in the bailiffs and burgesses—but the qualifications for burghership were again discussed ; and it was stated that *apprentices, eldest sons*, and persons by *redemption, inhabiting* within the borough at the time of being made free, were qualified—apparently disregarding the resolution of 1705, which decided that non-residents might be made free ; but which question was again raised, the sitting members asserting the affirmative, the petitioners the negative.

For the negative, the orders of 1624, which were before given in evidence on the other side, were again produced, but for the petitioners :—and also another order of the 12th of William III., disabling and utterly disfranchising several burgesses from their freedom, who, by reason of their *dwelling* in *foreign* places, were become *foreigners*, and had so continued *above a year* ; and that, from thenceforth, they were not to be reputed *freemen*, or otherwise than *foreigners* :—an order certainly going too far, at least, in terms, for it could not put an end to their being freemen, inasmuch as having once been free, they must always have continued so—but dwelling out of the borough, though still free, they would cease to be *burgesses of that place*. 1700. Foreigners.

The petitioners also called parol evidence, to show that none but inhabitants were ever known to be made free, or to vote, before King James' time, till within ten years, when *honorary* freemen were made ; a term, of itself importing innovation, for it was altogether unknown to the law, and a mere novelty. It was added, that the votes of these freemen were protested against in the borough, and Honorary freemen.

Elizabeth. disallowed by the House, by the resolution of the 26th of 1710. November, 1702.

Fines. The sitting member, to show that *foreigners* might be made free and vote, insisted upon several entries in the reign of Edward VI, Philip and Mary, Queen Elizabeth, and King Charles I., of admissions of several who paid *fines* of 20s., and reproduced the order of the 6th of James I., that no foreigner should be made free under 20s. fine; and proved again the fact of Sir Edward Neville having been elected an alderman, and an order of 1685, giving five votes to twelve burgesses, named, although they were not resident; but it is clear this latter order was illegal, and being an excepted case, established the rule to be the contrary.

Common stock. It was also proved that those who were made free, having no right, paid a *fine* (which has been already explained) and those who had a right paid no fine, but only the usual fee:—which is also easily accounted for, because the *fathers* of the *sons* of freemen had before paid to the *common stock*:—and *apprentices* had by their service in the borough contributed to its general welfare, and had also inhabited there for seven years.

Persons living in or out of the town, not free, were stated to be called “foreigners,” and freemen living out of the town, “non-resident freemen.” This might all be true, but does not materially affect the real question; and the same witness stated, that *he knew no foreigners to be made till within the last eight years*. It appeared, also, that several who were not inhabitants were made free under King James’ charter—which at once explains the whole origin of this *illegal* and *unconstitutional innovation*. The resolution of 1705 was also read in evidence.

Right. The committee resolved, in the words of the former decision, that the right was “in the freemen only, having a right to their freedom by birth as *eldest sons* of freemen” (for, strange to say, that part of the former decision was not disputed), “or by serving seven years’ *apprenticeship*,” but as to the right of redemption, it was properly confined to persons *inhabiting* in the borough at the time of their being made

free; and they therefore determined, that the sitting members who insisted on the right of the *non-residents* were not duly elected, and that the petitioners who insisted against that right were duly elected—*thus redeeming once more the borough from the overwhelming influence of non-residents.*

Elizabeth.

1710.
Non-residents
negatived.

In the 15th of George II. there was another petition from this place.

1741.
Petition.

In 1801, in consequence of the elective franchise having, by the decision of the House of Commons, been involved in the intricacies of corporation law, the municipal privileges of this place were brought before the court of King's Bench.*

In the 43rd of George III., the further consequences of the decisions supporting the arbitrary right of the corporation to admit freemen became apparent; and the evils complained of in 1702, by the arbitrary and illegal acts of the bailiffs in the admission of freemen, contrary to the rights and customs of the borough, seem to have revived; as it appeared† that the bailiffs had held a court on *the morning of the election*, and had illegally *admitted* several to their freedom who had no right, and *rejected* several who had a right, and who claimed to be admitted. The informations, in nature of quo warranto, against the bailiffs were referred to, and their ousters under them; and they were charged with corruption and partiality in favour of the sitting members, against whom a similar imputation was also directed. But as the acts of bribery had been committed by persons alleged to be agents of the sitting members, and as the committee required proof of that agency in the first instance, the petitioners abandoned any further proceeding.

In the same year, there was another quo warranto in the court of King's Bench,‡ which closes the inquiry as to the right of burgess-ship in this borough, discussed no less than seven times before committees of the House of Commons, and often the subject of inquiry in the court of King's Bench—40 freemen being at once ousted, as illegally admitted.

The subsequent disgraceful proceedings with respect to

* See *Rex v. Clarke*, 2 East, 75.

† 1 Pat. 475.

‡ See *Rex v. Thornton*, 4 East, 294.

Elizabeth. bribery, which occupied the attention both of the House of Lords and the House of Commons for a considerable period, are too recent and too notorious to require further mention:—being indeed foreign from our inquiry, excepting as far as they may be assumed to be the indirect consequences of the arbitrary power given to the corporation by the erroneous decisions we have pointed out; and which power being abused by the leading members of the corporation, that disgraceful example naturally begot in the lower class of freemen a disregard of their public duty, and left them, without restraint, open to the temptations of corruption.

The great bulk of honorary freemen were made at the close of the last century, and were used to influence the *leet juries*; but the court of King's Bench determined that they were illegal, and consequently they were all ousted.

Thus has this place—irregularly called upon to return members to Parliament by Queen Elizabeth, though it must be admitted that there are grounds for supposing it to have been a borough earlier than the three other previous places; and it is said to have once before returned a representative—been the scene of endless parliamentary inquiry, legal dispute, expensive litigation, and gross bribery and corruption:—whilst the simplicity of our ancient institutions, and the general principles and practice of the law have been materially infringed upon, by the dubious, varying, and unguarded decisions, which have from time to time been made as to its municipal rights.

Queen-
borough.

1368. 5.—*Queenborough*, the next place summoned by Elizabeth, was clearly not a borough by prescription, because we have before* seen the period—the 42nd Edward III.—at which it was created and built. But it is a singular circumstance with respect to this place, that although it was then expressly made a borough, it did not return members to Parliament till this period. The charter of Edward III. was confirmed by many succeeding kings to the burgesses and *inhabitants*.

* See before, p. 663.

It was not incorporated till the second year of the reign of Elizabeth. Charles I., long after its creation as a borough;—and even 1626. when incorporated, all its municipal business was transacted at the *court leet*, which is regularly held to the present day. Court Leet. Inhabitants.

The charter of Edward III., is a grant to the *inhabitants*, its object being to induce people to come and dwell there; and it is clear therefore, beyond all doubt, that its burgesses were originally the *inhabitants*, and their class or description has never since been altered. In conformity with this fact, upon the charters of this place coming before the court of King's Bench [upon a proceeding in *quo warranto*],* it was held that an *inhabitant* might be made mayor, although he had not been previously admitted as freeman or burgess.

It is true that the doctrines as to *freemen*, and their rights by *birth* and *servitude*, were engrafted on the constitution of this borough:—*but it was not by virtue of any charter—for there is none relating to it:—nor of any prescription—for there could be none, inasmuch as the place was built within the time of legal memory:—but it was from the GENERAL COMMON LAW OF VILLAINAGE AND FREEDOM, as we have before pointed out, that this doctrine and practice were derived.*

Fortunately for this place, though it has been on other grounds much before the public, it has not been often the subject of parliamentary or legal investigation.

There were some petitions arising out of the elections, but they were not followed by any other proceedings, till the third of George II., when the right was *agreed* to be in the mayor, bailiffs, jurats, and burgesses. And according to the distinction which we have frequently pointed out, the committee, expressly negating their right of *electing*,† resolved, that the power of *admitting* burgesses was in the mayor, jurats, and bailiffs:—which doubtless was correct: because, whenever any inhabitants of free condition applied to them, Admitting Freemen.

* See *Rex v. Greet*. 8 Barn. and Cr. 363.

† A select body being only part of the corporation, was held to have no right to make freemen; although they had exercised that right a long time; it having been before exercised by the body at large. See *Rex v. Holland—Oakhampton—* 2 East, 70.

Elizabeth. as the head officers of the place, to be enrolled and sworn ; or were presented to them by the court leet in that character, it was their duty to swear and enrol them : the jurats being in this instance, as in those of the Cinque Ports, and other places in the county of Kent, originally the jury at the court leet.

Court
Leet.

The proceedings of that court are in existence from a very early period, and show precisely what were the real nature, rights, and functions of a borough ; * and as there are entries immediately preceding and succeeding the grant of the charter of Charles I., it can in this instance be most distinctly shown, that the charter, which was one of incorporation, did not in any material degree affect the rights of burgess-ship, or indeed any of the privileges of the borough, except only as far as it expressly purported to do so.

Notwithstanding, therefore, all the magic which is thought to belong to the important act of incorporation, when its real nature is not considered ; upon a proper investigation of the subject, and examining the real facts which exist, it will be found, that it did not extend further than to give the ordinary power of taking by succession, and suing and being sued by a corporate name ; although clauses for regulation of the elections, and relative to the markets, fairs, justices, and other officers were added to the grant ; as well as a power of making bye-laws :—but the latter privilege was unnecessary to be expressed, as far as related to the body at large, because it was incident to the whole corporation, but not to any select body ;—and therefore, when it was intended that such a body should have that power, the charter expressly gave it.

Inhabi-
tants.

In truth, Queenborough is a place about which there could have been no doubt as to the *inhabitants*, and the *inhabitants only*, being the burgesses. The first charter draws the distinction between the *inhabitants* and *foreigners*, and gives privileges to the burgesses as long as they inhabit ; but yet *non-resident* freemen by degrees were irregularly

Non-
residents.

* See printed report of the case of the Mayor and Burgesses of Queenborough v. Skoy.—Maidstone, July, 1826.

allowed to interfere—although there are, upon the records of Elizabeth. the *court leet* abundant entries to show, as we have seen in other places, that every person *going from the borough* for a *year and a day*, ceased to have any rights of burgess-ship. And the bye-laws of the borough, in effect, prove the same.

On a recent occasion of an election petition, these entries, and the other evidence, were proposed to be given in evidence against the right of the non-residents; but the sitting members were unseated without going into the inquiry, and the facts were not proved—though no doubt can properly be entertained respecting it.

Before we close these short observations it should be added, that in the books of this borough, as in those of Colchester, interpolations and erasures have been made, for the purpose of introducing the usurpations of the select body.

6.—*Woodstock* is not mentioned as a borough in Domesday;* nor had it, as far as appears, any very early charter.

Wood-
stock.

It seems however to have been a borough in the reign of Edward I., shortly after representatives of the commons were first returned to Parliament; for it sent members in the 30th year of that reign—and again in the 33rd of Edward III.—and it is said also in the first of Queen Mary, and two other Parliaments in that reign—after which it intermitted, till the 13th of Elizabeth, when its right to return members was disputed.

1301.
1359.
1553.

We have before seen, that, in the reign of Henry VI.,† *Woodstock* was incorporated, on the request of the *inhabitants and residents*, who, with their *heirs* and successors, were to be free burgesses.

And, in the 26th of Elizabeth, we find in the Lansdowne Manuscripts, amongst the Burghley Papers,‡ the following petition to Lord Burghley; from which the species of usurpations in the select bodies of corporations, at that time prevalent, may be ascertained.

It should be observed, that this is only 13 years after it was re-summoned to send members to Parliament.

* See before, p. 203.

† See before, p. 683.

‡ No. 40—32.

WOODSTOCK.

consideration, and respect of dangers to be
are the alteration of the charter of Woodstock,
dered, in behalf of divers *inhabitants* of the same
the Right Hon. Lord Burghley, lord high treasurer
and.

“First, all *inhabitants and tenants* within the burgh, of
ancient time, had divers great privileges and liberties by
prescription, before their charter; by which ‘*every inhabitant*
and tenant is and ought to be a free burgess.’* ”

“And also, by virtue thereof, might devise all their lands
within the town, which otherwise, by common law or
statutes of this realm, they were prohibited to do.

“By that charter also the election of the mayor ought to
be by the *whole commonalty, by common consent*: and also,
by letters of privy seal, King Henry VII. did strictly com-
mand and charge the town, to make choice of *their mayor by*
general assent, and such as were of good disposition, indif-
ferent, and sufficient ability. And *that no serving-men,*
or any of livery, should inhabit or be free amongst them.
Furthermore, by the said charter, the mayor is also clerk of
the market, and has the determination of all causes con-
cerning the assise of bread, ale, and victuals.

“And also, by the charter, a piece of land or marsh, called
‘Le Poole,’ was granted to *all the commonalty*. For per-
formance of all which liberties and privileges, and divers
others in the letters patent contained, all the burgesses
and freemen were sworn, and not to consent to the breach
thereof.

“But of late, within these few years, certain victuallers of
the town, being confederate together, and having a mayor for
their purpose, who was also a victualler, have first brought
to pass, contrary to their oath and charter, that the mayor is
yearly chosen by a few of their own pack and confederates,
whom they name in common council, and not by voice of

* And it is by no means singular, that *all the inhabitants* should be *incorporated*; for we have seen many instances of it:—and in a case respecting the burgesses of Oakingham, in Berkshire, Lord Hardwicke, with respect to a similar charter, said expressly, that “all the inhabitants were incorporated by it.” And the inhabitants of Nantwich, under like grants, claim and enjoy exemptions from *juries*.

the commonalty. Whereby they assure themselves, contrary to the ancient statutes in this behalf, evermore to elect a *victualler*, who will yearly, for a fine certain, dispense with all victuallers, to the utter decay of the poor.

Elizabeth.

1583.
Petition.

“And by this policy of private election, have, within these five years, four times chosen one Skelton, being a butcher and victualler, to be mayor. Who hath first, by ordinances contrary to the statute made in the 19th year of King Henry VII., not approved by the right honourable the lord chancellor, or by the chief justices of either bench, or justices of assise in the same circuit, *disfranchised* two of the aldermen of the same town, only for maintaining their charters according to their oaths. And under pretence of authority, hath grievously imprisoned, fined, and amerced, divers of the best disposed men—not according to their offences, but after his own greedy mind, to enrich himself; having, by the charter, all fines and amerciements granted to the mayor and commonalty, which he employeth at his own pleasure. And furthermore prohibiteth, when he listeth, to take any benefit of the said marsh, called ‘Le Poole;’ and also restraineth the better sort from dealing in any matter touching the estate of the town, or employing of the *common stock* to the public benefit of the town. Threatening daily to disfranchise others of good behaviour; and giving out confident reports, that by the new charter, he will purchase authority to do such things, which neither by law nor their ancient charter are justifiable. And by this means, disturbeth the common peace and quiet of the town; which, by the maintenance of their ancient charter and liberties (till now of late) they have always enjoyed.

Disfranchised.

Common
stock.

“May it therefore please your good lordship, honourably to foresee and provide that your supplicants may not be disherited—by disfranchising them—depriving them of their voice in elections—or abridging their former liberties to devise their land by will—or by prohibiting them from taking equal benefit with others of the land called ‘Le Poole.’ To all which things your supplicants and their heirs are, both by custom and charter, now inheritable. And finding

Elizabeth. this, all your supplicants will most willingly assent, and
 1583. to their power further the reformation of the said charter,
 Petition. in any point defective." An offer of timely and prudent
 reformation, highly creditable to the petitioners.

The charter of Henry VI. was confirmed and amplified by Charles II., under whose charter the borough is now governed, by a mayor—four aldermen—a high steward—recorder—17 common councilmen—and a town clerk.

1713. Few other particulars appear of this place; but, in the 12th year of Queen Anne, it seems the same evils which had occurred in Retford, and which had unfortunately received in part the sanction of the House of Commons, had extended themselves to Woodstock. It is stated, in a petition of this date, that two of the candidates had prevailed with the
 New free- mayor to *make divers new freemen, for the purpose of the*
 men. *election*; and by imprisoning—bribery—and other illegal practices, had procured their return.

The petitioners insisted that the right was in "the mayor, aldermen, common council, and freemen, living as well *without* as within the borough." The sitting member, on the contrary, that the right was only in the freemen, residents, and inhabitants.

Several witnesses were examined on both sides; and the charter of Henry VI. was produced.

Right. The committee resolved, that the right was "in the mayor, aldermen, and freemen"—apparently negating the right of the non-residents, as they ought to have done, consistently with the particular charter to this place of Henry VI., and with the general law.

Christ- 7.—*Christchurch* is mentioned in Domesday* as a borough,
 church. under the name of *Thuinam*.
 Thuinam.

1335. In the ninth year of Edward III., there was a grant to William de Montacute (inter alia) of the castle of Christ-
 Borough. church Twynam, with the *borough* and manor of Westowne, and the hundred of Christchurch.

1306. It is said that it was allowed to send members in the 35th

* See before, p. 109.

year of Edward I., and summoned in the second of Ed-^{Elizabeth.}
ward II.; but no returns were made to the precept, and 1308.
Prynne does not include it in his list of the places which
returned members:—but in another part of his work, he
mentions the summons in the reign of Edward II.*

But it intermitted again till the 13th of Elizabeth, when
this question arose, as to its returning members to Parlia-
ment. After which many petitions were presented re-
specting this place, but none of them were followed by any
resolution.

In the 9th George I., a petition stated truly, that this was 1722.
a borough by prescription; but it is added, without any
colour of authority, that it anciently consisted of a *mayor*,
burgesses resident in the borough—*out-burgesses*, and *inhabit-*
ants called the *populace*.

Anciently there could not have been any *out-burgesses* - Out-bur-
according to the history—principles—or practice we have gesses.
endeavoured to develope. And as to the inhabitants being
called the “*populace*,” it seems to have been altogether a Populace.
gratuitous assumption; as such a term was then totally
unknown to the law.

It appears from this petition, that the mayor was sworn in
at the Michaelmas court leet; and as we have seen in former
instances, the first appearance of abuse was in neglecting to
hold that court.

By another petition it appears, that from the fifth of 1718.
George I., there had been great controversies and prosecu-
tions at law, including a trial at bar in the court of King’s 1720.
Bench; and afterwards, the *burgesses* and *inhabitants* applied
to the king by petition for a charter of *incorporation*: and
upon an inquiry before the king in council, it was reported
by the attorney and solicitor-general, that the corporation
was disabled to act without the king’s aid, and that the most
advisable method for his majesty, if he thought fit, would be
to grant such a charter.

No further circumstances appear with respect to this
borough, which is, in some degree, in a different position

* Brev. Red. Parl. p. 210.

Elizabeth. from the others summoned by Queen Elizabeth, as it was a borough by prescription, and had previously returned members to Parliament.

Aldbo-
rough.

1570.
1547.
1606.

8.—*Aldborough* is not mentioned as a borough in Domesday,—and it never returned members to Parliament, till the 13th of Elizabeth. It was incorporated in the first year of Edward VI.—again in the fourth of James I.—and by Charles I., under whose charter it is now governed, by two bailiffs, 10 capital and 24 inferior burgesses, with other officers.

There are but few records material to our inquiry, relating either to its municipal or parliamentary rights.

1689.

In a petition in the first year of William and Mary, however, the abuses which we have pointed out in other places, appear to have been introduced in this, by the *power* of *electing* freemen, (negatived by the House in the Queenborough case,) being exercised by the *select body* of the corporation; and by their nomination of *out-burgesses*.

The petition stated, that “at the poll there appeared to be 26 freemen and *inhabitants* for Sir E. Turner, and only 14 for Mr. W. Johnson; whereupon Sir Henry Johnson and Mr. Johnson, brought in out of the country several gentlemen, farmers, and others, *not inhabiting* within the borough, *nor paying scot and lot*, nor bearing any charge of the corporation,* being but *lately made free contrary to the usage and custom of the borough*, by the procurement of one alderman Bence, purposely to assist in that election. By which means the petitioners’ right of election is destroyed, and they are deprived of their freedom therein, and praying that Sir E. Turner might be admitted to sit in Parliament.”

This petition, which appears to state so distinctly the real grievances of which the *inhabitants* had at that time such

* This is an instance, of which there are many others, of the parties who complain of the misconduct of the corporation, themselves tacitly admitting their right, by adopting the name of corporation. The petition ought to have referred to the charges of the borough,—bearing the charge of the corporation is insensible, and language unknown to the law; bearing the charge of the borough, would have been consistent with law and other precedents.

just cause to complain; was omitted to be renewed the next Elizabeth.
 year. And when in 1691, the case came before the House, 1699.
 the petition of the inhabitants was disregarded, as none had
 been presented by them in the last session.

Sir Edward Turner's petition was renewed. And Serjeant 1691.
 Trenchard reported the question to be, whether the right of Right.
 election was in the *freemen resident within the borough*;
 or in the *freemen at large*: for it was agreed, if in the
 former, the petitioner was elected; if the latter, the sitting
 member.

For the petitioner it was insisted, that this was a borough
 by prescription, and was *incorporated* in the first year of
 Edward VI., whose charter was produced; and a paper
 whereby the *non-resident freemen* had subscribed not to
 have advantage of the marshes, quay and causeway, belong-
 ing to the town.

For the sitting member it was insisted, that Aldborough
 was a borough by prescription, (which there is great reason
 to doubt);—and Thomas Wall, who was produced by the
 petitioner, having proved that *non-resident freemen had voted*
in other elections of burgesses to serve in Parliament,

The committee resolved,—

That William Johnson, Esq., was duly elected.—And the
 House agreed to the resolution.

It will be remembered that this decision is subsequent to Non-resi-
 the reign of James II., in which we have seen by other cases, dents.
non-residents were introduced by the violent acts of the
 crown. Wall's evidence is general that non-resident free-
 men had voted before,—not saying whether it was in the
 reign of James II., or not. Considering that the interference
 of *non-residents* with the local rights of the *inhabitants* is so
 unreasonable—as well as so entirely contrary to the whole
 nature and spirit of the municipal institutions of the country
 —it is not an unjustifiable assumption, to presume that this
 unconstitutional practice to which Wall referred, was intro-
 duced in the reign of that unfortunate monarch. Particu-
 larly, as it is subsequently shown that it was illegal, by

Elizabeth. another committee afterwards bringing back the right to the Residents. *residents*.

1708-9. There was also a report upon another petition in the seventh year of Queen Anne, again stating that the petitioners had insisted, but it seems merely as an assumption without any evidence, that it was a borough by prescription. They truly added, that it was *first incorporated by Edward VI.*, and they reasonably contended, that the right was in the *burgesses and freemen, inhabitants* in the borough.

Sitting member. The sitting member insisted, that it was *a corporation by prescription*,—for which there is no pretence—nor had it been before asserted,—and the right was said to be in the bailiffs, capital burgesses, and other inferior burgesses, and the freemen.

Another person, also of the name of Wall, was called as a witness, who spoke to four or five elections, having lived in Aldborough 16 years. But that period did not go back to the former determination in 1691, and doubtless after that decision *non-residents* would have voted. When, therefore, he asserted that the non-residents had voted as well as the residents, without distinction or objection, he proved nothing as to the *ancient* practice of the borough; but only showed that the former decision had been acted upon. It is true, he added that he had never heard that the usage in elections was otherwise—but such negative assertion could at the best be of little weight: and when he likewise produced the report of the former committee, it cannot be considered but that he was in truth referring to the usage subsequent to that period; before which he could have no knowledge.

Right. However upon such evidence as this, the committee, as in the Totness and Retford cases, decided that the right was in “the bailiffs, burgesses, and freemen,”—thereby in effect—though not expressly—supporting the right of the *non-residents*.

It should be observed, that both the petitioners and the sitting member, as well as the committee, seemed to have erred in form, in asserting the right to be in the *burgesses and*

freemen; because it imports that there were two classes entitled to vote: which could not be. For there is no doubt, that both with respect to the municipal and parliamentary rights, there can be but one question, which is—who are the *burgesses*? They by the charters are to enjoy the municipal rights: and they by the writs and precepts are to elect the members. There cannot be two classes.

Elizabeth.

1709.

Mayors, aldermen, jurats, sheriffs, and bailiffs, are often mentioned in the charters—in the name of incorporation—and in the determinations as to the right of election;—but the grants are not made to them, nor are they incorporated, nor do they vote, or enjoy other municipal or parliamentary rights in those characters, but generally as *burgesses*. To this point, therefore, the whole must come:—and the question is, “Who are the *burgesses*?”

Mayors,
&c.

It is true that none could be *burgesses* but *freemen*. It is also true, that *since villainage has ceased all are freemen*. And if the taking the oath of allegiance, and the being admitted, and enrolled at the court leet, is no longer necessary, but obsolete, (as the court of King’s Bench decided in the Maidstone case,) then indeed *all the inhabitant householders paying scot and lot without more, would be the burgesses*—and this description might be sufficient to denote the *burgesses*. But whatever it is, there can be but one class—and therefore, in form this description was inaccurate. If it meant that the *freemen* were the persons entitled to vote, and then the others, though also freemen, were merely called “*burgesses*,” as by their name of dignity or office, then the decision is so far intelligible. As far however as it included *non-residents* it was erroneous, for the reasons we have given before.

The plausible pretext upon which such a right was supported, was the assertion that “*once a freeman, always a freeman*:”—and therefore, although a person left the place in which he had been admitted as a freeman, he still continued free.—This taken with reference to the doctrine of villainage is undoubtedly true; for no person having once been of free condition, could ever afterwards be reduced again into a

Elizabeth. as the head officers of the place, to be enrolled and sworn; or were presented to them by the court leet in that character, it was their duty to swear and enrol them: the jurats being in this instance, as in those of the Cinque Ports, and other places in the county of Kent, originally the jury at the court leet.

Court
Leet.

The proceedings of that court are in existence from a very early period, and show precisely what were the real nature, rights, and functions of a borough; * and as there are entries immediately preceding and succeeding the grant of the charter of Charles I., it can in this instance be most distinctly shown, that the charter, which was one of incorporation, did not in any material degree affect the rights of burgess-ship, or indeed any of the privileges of the borough, except only as far as it expressly purported to do so.

Notwithstanding, therefore, all the magic which is thought to belong to the important act of incorporation, when its real nature is not considered; upon a proper investigation of the subject, and examining the real facts which exist, it will be found, that it did not extend further than to give the ordinary power of taking by succession, and suing and being sued by a corporate name; although clauses for regulation of the elections, and relative to the markets, fairs, justices, and other officers were added to the grant; as well as a power of making bye-laws:—but the latter privilege was unnecessary to be expressed, as far as related to the body at large, because it was incident to the whole corporation, but not to any select body;—and therefore, when it was intended that such a body should have that power, the charter expressly gave it.

Inhabi-
tants.

In truth, Queenborough is a place about which there could have been no doubt as to the *inhabitants*, and the *inhabitants only*, being the burgesses. The first charter draws the distinction between the *inhabitants* and *foreigners*, and gives privileges to the burgesses as long as they inhabit; but yet *non-resident* freemen by degrees were irregularly

Non-
residents.

* See printed report of the case of the Mayor and Burgesses of Queenborough v. Skoy.—Maidstone, July, 1826.

allowed to interfere—although there are, upon the records of Elizabeth. the *court leet* abundant entries to show, as we have seen in other places, that every person *going from the borough* for a *year and a day*, ceased to have any rights of burgess-ship. And the bye-laws of the borough, in effect, prove the same.

On a recent occasion of an election petition, these entries, and the other evidence, were proposed to be given in evidence against the right of the non-residents; but the sitting members were unseated without going into the inquiry, and the facts were not proved—though no doubt can properly be entertained respecting it.

Before we close these short observations it should be added, that in the books of this borough, as in those of Colchester, interpolations and erasures have been made, for the purpose of introducing the usurpations of the select body.

6.—*Woodstock* is not mentioned as a borough in Domesday;* nor had it, as far as appears, any very early charter.

Wood-
stock.

It seems however to have been a borough in the reign of Edward I., shortly after representatives of the commons were first returned to Parliament; for it sent members in the 30th year of that reign—and again in the 33rd of Edward III.—and it is said also in the first of Queen Mary, and two other Parliaments in that reign—after which it intermitted, till the 13th of Elizabeth, when its right to return members was disputed.

1301.
1359.
1553.

We have before seen, that, in the reign of Henry VI.,† *Woodstock* was incorporated, on the request of the *inhabitants* and *residents*, who, with their *heirs* and successors, were to be free burgesses.

And, in the 26th of Elizabeth, we find in the Lansdowne Manuscripts, amongst the Burghley Papers,‡ the following petition to Lord Burghley; from which the species of usurpations in the select bodies of corporations, at that time prevalent, may be ascertained.

It should be observed, that this is only 13 years after it was re-summoned to send members to Parliament.

* See before, p. 203.

† See before, p. 883.

‡ No. 40—32.

Elizabeth. town marsh, because they did not contribute to any public charge.

Two returns were adduced in evidence, which did not materially affect the question:—and parol evidence was given as to the elections in the reign of Charles II., to show that none but *inhabitants* had voted:—and that *out-burgesses* did not do *watch and ward*.

Watch &
ward.

On the other hand it was attempted to be proved, for the sitting members, that the freemen at large had voted for fifty years:—that the witness never knew any out-burgesses refused:—that they served town offices, and were annually called over from the roll, and fined for non-appearance: and he spoke of four out-burgesses who voted in 1669. Other witnesses proved to the same effect, and the decisions in 1691 and 1709 were produced.

Out-bur-
gesses.

For the petitioners it was alleged in reply, that in those contests, little or no evidence was to be had against those members who were then returned.

Resolutions The committee resolved, that the right was not in the “bailiffs, burgesses, or freemen;” but in the “bailiffs and burgesses *resident* within the borough.” Thus restoring the right properly to the *burgesses—inhabitants* of the place.

CHESTER.

Many instances have already been shown of the provisions in charters, and ordinances in bye-laws, enforcing the residence of the burgesses; but the following document from the Harleian MSS., relative to Chester, puts it in so clear a point of view, that its insertion in this place may be excused.

1593.

It is of the date of the 35th of Elizabeth,* and is a letter to some of the non-resident citizens:—
“My very hearty commendations unto you remembered. Whereas this *incorporation*, for the good opinion conceived of you both, made you *free* of this city, as also an *alderman* thereof; which of a long time you have enjoyed, hoping that you would have been ready, according to the course, to have taken further charge upon you—as the office of mayor-

* Harl. MSS. 2082, p. 140.

alty of this city—and afterwards your *contributions* accord- Elizabeth
 ingly. And albeit, the admittance of you, and of every 1593.
 other person *entering into* the *franchises* and *liberties* of this
 city, are upon condition, that if any such franchised person
 shall not make his *abode* or *resiancy* within this city, but
 without, by the space of a *twelvemonth and a day*, then
 such admittance to be void. And by the absence of you and
 others, *free citizens* of this city, the countenance thereof is
 greatly weakened, and the ordinary charges of *scot and lot*
 supported both to her majesty, and to this city, and every
 other way, by a few *inhabitants* here. And albeit, also, this
incorporation heretofore minding the amendment of the
 same, took general order that you, and all other free citizens
 of this city, should make your repair hither by a day long
 past for the accomplishment of such order, and you, having
 had thereof warning, have not accomplished the same
 eftsones, as this present like order is taken by this *incorporation*,
 that you and all others, free citizens of this city, who
 have *inhabited out of this city by the space of a twelvemonth*
and a day, not having borne scot and lot as citizens, by the
 feast of the purification of blessed Mary the Virgin next
 coming, must either repair to this city and *make your resiancy*
therein, and accomplish that as is required thereby, or else
 thenceforth to lose such freedom and calling here: whereof
 I, as mayor, do hereby certify you. And forasmuch as this
 incorporation greatly favoureth you, and that you have always
 been friendly to the same, and showed yourself otherwise as
 a good citizen, and every member of this common weal de-
 sirous of your continuance amongst them, therefore I do re-
 quest you, as your good friend, and one that greatly favour-
 eth you, that by the well-limited time you do fully satisfy
 this incorporation of your resolution under your own hand in
 writing, whether you will repair hither to take order for due
 payment and *answering of all contributions* henceforth, as to
 your calling within the city requireth, or else as before to
 lose the same, considering your good acceptance amongst us;
 and therefore the rather pray your due consideration of the
 premises as thereof speedy answer, and to accept hereof in

Elizabeth. good part in respect of the all good intended hereby to its
 1593. due effect. And thus ceasing, commit you to the blessed
 tuition of the Almighty. Chester, October 27, 1593.

"Your very loving friend and mayor."

"Several letters to the like effect were directed—to Mr. Robert Snagg; Mr. Edward Hanmer; Mr. John Teson; Mr. Thomas Heward."

EYE.

9.—Although *Eye* is not mentioned as a borough in Domesday, its burgesses are spoken of in the entry for Suffolk :*—but it did not return members to Parliament till this period.

An inquiry, however, occurred as to the delivery of the writ, with respect to two elections; but nothing is contained in the Journals relative to the municipal or parliamentary rights of the burgesses.

1680. In the 32nd of Charles II. there is an entry on the Journals, that the House, taking notice of several abuses and misdemeanors committed in this borough and corporation, relating to elections and otherwise, ordered a committee to be appointed to examine and report upon them. But no further proceedings occur respecting it.

William III. granted a charter to Eye, under which it is now governed, by two bailiffs, a recorder, 10 capital burgesses, and 24 common councilmen.

The right of election, as it was *exercised*, affords another instance of the anomalous confusion produced in boroughs by modern usages: as *two* classes of persons claimed to be entitled to it, "the free burgesses or corporators," and "the inhabitants paying scot and lot."

1822. This borough has given birth to a curious inquiry in the court of King's Bench,† founded upon a bye-law of the corporation, which directed that, "upon the happening of any vacancy in the number of twenty-four common-councilmen, it should be filled by the *freemen inhabiting the town*, and

* See before, pp. 279, 281, 282.

† *Rex v. The Bailiff and Corporation of Eye*, 1 Barn. and Cr. p. 85.

that a *court* should be holden once every year, at which it Elizabeth. should be lawful for the bailiffs to admit to the freedom of the town such persons of *good fame* as had been *resident* therein *for one whole year*." And it was held by the court, that this bye-law did not give to *every* such person, who had been so *resident for that period*, an absolute *right* to be admitted to the freedom of the borough; and therefore the court refused a mandamus to the bailiffs to admit such a person: *although it appeared that he had been fined for carrying on a trade within the town without being admitted to his freedom.*

It should be observed, that this bye-law is consistent with the common law—the bye-laws of many other places—the Cinque Ports, &c., and, properly considered, should be treated as declaratory of the general law. It is, therefore, a matter of surprise, that the court should not have allowed the mandamus to issue, either on the ground of the general law, or the bye-law. For although it was said that "it could not be supposed that the corporation meant to impose an obligation on themselves, but rather only to acquire the power of doing the act if they thought fit;"—yet, surely, it would be more consistent with a *due regard to the proper execution of public duties*, to assume, that the framers of that bye-law considered that it was beneficial to the place, to admit *all* such persons as burgesses: and that they made the ordinance with a view of publicly announcing, that *all* persons so circumstanced should be *entitled* to be admitted, if they thought fit (according to the language of the Cinque Port bye-laws) to *ask* for their admissions, &c.:—and that, on the other hand, they should be *compellable* to be *sworn* and *enrolled*, if for the good of the town, in any respect, it should be considered expedient to constrain them to do so. This assumption would be consistent with the fact stated above, that the party had been fined for carrying on a trade within the town without being admitted to his freedom. Whereas, on the other hand, to hold that he was not *entitled* to be admitted, if he thought fit; and yet was *liable to be fined* if he traded without being admitted; would operate as a direct restraint upon trade—be contrary to the general policy of the law—

Elizabeth. and, in fact, make the whole illegal. It is, therefore, a just ground of surprise that where there were two modes of construing a bye-law—one which would make it consistent with the general law and practice—and another which would render it contrary to law, and practically inconvenient,—the court should have adopted the illegal, and rejected the constitutional construction.

The reader will, therefore, have now a full opportunity of considering the varying circumstances under which Queen Elizabeth summoned these *nine* places to Parliament:—and the contradictory decisions and abuses which have been developed, in the progress of the inquiry into the different histories of these towns.

Residence Not only were the *burgesses* who elected members to Parliament at this time *resident* in the respective boroughs, but also the *members* themselves:—and it was not till the 13th year of Queen Elizabeth, that a bill was brought into Parliament for the validity of burgesses *not resiant*. Upon its being read a second time, the following debate is reported to have taken place:—

“Mr. Warnecombe said,* that it behoveth all those who were burgesses to see to the bill;—for this may touch and over-reach their whole liberties; as not having whereunto to stay, but that *lords' letters* would from henceforth bear all the sway.

“Mr. Norton, in support of the bill, urged the imperfection of choice, which was too often seen, by sending of unfit men; and lest happily any thing might be objected to the imperfection of Parliament, which may seem to be scant sufficient, by reason of the choice made by boroughs for the most part of *strangers* (whereas, by the positive law, no man ought to be chosen burgess for any borough but only *resiants and inhabitants*).† He said, further, that the choice should be of such as were able and fit for so great a place and employment, without respect of privilege of place or degree; for

* D'Ewes' Journal, p. 168.

† Stat. 1 Hen. V.

that, by reason of his being a burgess, it might not be intended or thought he was any thing the wiser. Withal, he argued that the whole body of the realm, and the good service of the same, was rather to be respected, than the private regard of place, or the privilege or degree of any person." Elizabeth.

To which it was answered, by a member whose name does not appear, that the question was, what sort of men were to come to this *court*, and public consultation in Parliament? Whether from every quarter, county, and town, there should come *home dwellers*—or otherwise, men chosen by directions, it forceth not whom. He then contended, that it was neither for the good service of her majesty, and the safety of the country—nor standing with the liberty, which of right may be challenged (being *born* subjects within the realm), this scope should be given, or such looseness in choice permitted. For how may her majesty, or how may the *court* know the state of her frontiers, or who shall make report of the ports, or how every quarter, shire, or county, is in state?

That the old Parliament writs direct, that of every county their own burgesses should be elected. That the statute in the first of Henry V. confirmed the old laws; and the statute of Henry VI. was made to redress the mischief, which by breach of the old law did grow, and that it would be *most dangerous to alter the ancient usage; which was the only warrant and sole stay of freedom in Parliament.*

STATUTES.

In the same Parliament to which these *nine* places were summoned, many acts were passed of great importance in a general point of view, but not with reference to our subject of inquiry; excepting that the sixth chapter—which will explain the many exemplifications granted in this reign—provided, that “every exemplification or constat, under the great seal, of the enrolment of any letters patent by Henry VIII., Edward VI., Queen Mary, Philip and Mary, or by Queen Elizabeth, since the 27th of Henry VIII., should be pleaded, as if the letters patent themselves were pleaded.”

Cap. 6.

And the 10th chapter made provisions for the benefit and

Cap. 10.

Elizabeth. protection of *successors* to ecclesiastical property, particularly as to the granting of leases beyond 21 years, or three lives.*

Cap. 19. In a statute relative to dress, an exemption is made, amongst others, "of such as have borne office of worship in any city, borough, town, hamlet, or shire; and the wardens of the worshipful companies of London."

Cap. 24.
Ipswich. In the 24th chapter, the *bailiffs* and *portmen* of Ipswich are mentioned.

Cap. 29.
The uni-
versities. The 29th chapter, concerning the *incorporations* of the *Universities of Oxford and Cambridge*, and the confirmation of their charters, liberties, and privileges, recites the great love and favour that the queen bore towards those universities, and the zeal and care that the lords and commons had for the maintenance of good and godly literature, and the virtuous education of youth within the universities. And to the intent that their ancient privileges, granted and confirmed by the queen and her progenitors, might be had in greater estimation, and be of greater force and strength, for the better increase of learning, and the further suppression of vice, it was enacted, that those universities should be severally *incorporated*,† and have the usual corporate powers.

Incorporated.
1570. The charter of Henry VIII. to the University of Oxford, and of Queen Elizabeth to Cambridge, are confirmed. And amongst many other things, view of *frankpledge* and *law-days* were granted.‡ But there was a proviso, that nothing in the act contained should extend to the prejudice or hurt of the liberties and privileges of *right* belonging to the mayors, bailiffs, and burgesses of the town of Cambridge and the city of Oxford. Lord Coke says, "they were incorporated before, and were anciently corporations:§"—which, as to the

* See also cap. 20; and 14 Eliz. cap. 11, sec. 15—19.

† Christ Church, Oxford, was also incorporated; and it is stated in a case respecting that body, that a verdict for the liberties of the academy extended over the liberties of the city. Moore's Rep. p. 361.

‡ It appears by a plea to an information in the 36th year of the reign of Queen Elizabeth, that she had, in the third year of her reign, confirmed the charter of the fifth of Richard II. (vide ante, 736,) giving the assise of bread and beer. And the confirmation of the queen is stated to have been confirmed by Parliament in the 13th year of her reign. And it was said "that Cambridge had not the assise itself, but only the custody of the assise." Leon. 214.

§ 4 Inst. 227.

universities, is possible; because their very existence im-
 ported as much:—and being both severally situated in bo-
 roughs, and having no local or municipal existence or govern-
 ment, they could only exist, like guilds or fraternities, as
 independent *corporations*. Being of ecclesiastical origin also,
 increases the probability of their being anciently incorporated.

But still, as far as existing documents now affect that
 point, it appears that *this was the first proof of an actual
 incorporation*. As there are so many preceding charters, and
 some of them so full, tautologous, and minute, it is
 singular, if they were incorporated, that there is no expres-
 sion which in any degree refers to that circumstance.

In one part of the statute, indeed, the charter of Henry
 VIII. is stated to have been granted to the “incorporated”
 bodies of the Universities. Not much reliance, however, can
 be placed upon that equivocal expression, applying as well
 to the present, as the past—and denoting equally that they
 were *incorporated* when the charter was granted, as when
 the statute was passed.

The saving of the rights of the city and town, at the close
 of this statute, seems to have given occasion to some irregu-
 larities, of which the *University of Cambridge* complained,
 in the 39th year of Queen Elizabeth. They state the hard
 courses which the mayor and townsmen of Cambridge had held
 with them; and that all matters of variance and griefs betwixt
 both bodies had been referred, by direction of the lord chief
 justice of England, to conference among themselves; and
 articles had been exhibited of eyther to the other in writing;
 and answers given in on both sides, and a further treaty
 thereupon appointed. Notwithstanding all which, the towns-
 men injuriously exhibited complaints against the university,
 of untruths, foul and odious; and, in open speeches, excepted
 against their established jurisdiction, &c., and the *right of the
 leet*. And disfranchised many of their own corporation, for
 serving the queen at their *leet*, then lately holden. That they
 summoned known and privileged persons to their town ses-
 sions—awarded process against them—daily committed them

Elizabeth.

Corpora-
tion.Cambridge.
1597.

Elizabeth. —openly discharged victuallers—took scholars' horses to serve
 1597. post, upon ordinary commissions—and generally adventured
 to do any thing against the charters of the university, with
 such unwonted boldness and violence, that they were driven
 of necessity to seek relief.*

Other articles of grievances done by the mayor of Cambridge and his assistants, against the university, were likewise exhibited, which complained, amongst other things, that he had disfranchised five townsmen, of honest report and good account—some of them having borne office amongst them—for serving the queen in the proctors' leet, and for presenting ingrossers of corn; neither having nor alleging any other cause.

That Mr. Mayor had procured a *writ* to be served upon the vice-chancellor, July 13th, contrary to his oath and the charter.†

Notorious lewd persons, by the vice-chancellor and heads thrust out from serving the university officers, for abusing some chief men of the town, and for corrupt dealing under their masters, have been made officers and free burgesses, to nourish occasion of dislike and contention.

That one Slegge had arrested the vice-chancellor unjustly—viz. for the delivery of a prisoner, who was known to be dismissed before the writ served.‡

Cambridge
Town.

On the other hand, the mayor, bailiffs, and burgesses of Cambridge, made complaints against the university, amongst other things, for privileging divers graduates and others, to the number of 11 score, or thereabouts, in the town, using lay trades—as husbandry, brewing, and other trades, for their only maintenance, and such like; and divers widows, to defeat the queen's majesty of subsidy and other duties. And that the numbers of privileged persons exceeded the subsidy men of the town. And that they would not permit the lands of the scholars' servants to be rated in the subsidy. And yet the statute of subsidy was direct in that matter.

* Burghley Papers, Lansdowne MSS. No. 84, p. 86.

† Ib. No. 84, p. 88.

‡ Ib. No. 84, p. 90.

And other general misdemeanors, besides many outrageous particular offences, used and committed by the university and privileged persons, whereof the mayor, bailiffs, and burgesses, prayed and desired reformation.* Elizabeth. 1597.

However, notwithstanding these complaints and disputes, it is clear that this statute, *incorporating* both universities, gave them full and entire temporal jurisdiction: the only other act which was necessary to confirm their general power. The Universities.

SHREWSBURY.

A statute of the 14th of Elizabeth, chap. 12, relative to *Shrewsbury*, is, like all other documents of this reign, applied to those *inhabiting* and *dwelling* within the town. 1572.

HYTHE.

In the same manner, a charter of the 17th year of Queen Elizabeth, entitled, "a grant to the *inhabitants* of the town "and port of *Hythe*," recites, that "inasmuch as the *barons* "and *inhabitants* of the town and port of Hythe, in the "county of Kent, (one of the Cinque Ports,) from the time "whereof the memory of man is not to the contrary, have "been a body incorporated,† by the name of the *jurats* and "commonalty of the town and port of Hythe, in the county "of Kent." And for the better government of the town, and the subjects *inhabiting* there, grants that the *jurats* and *commonalty*, and the *barons* and *inhabitants*, should from thenceforth for ever be one body *corporate*, by the name of "the mayor, *jurats*, and commonalty of the town and port "of Hythe, in the county of Kent." 1574.

At the *common assembly*, as well of the bailiffs and *jurats* A. fo. 20b. as also of the *commonalty* of Hythe, holden in the *common hall* on the 26th of July, in the fifth year of the reign of Queen Elizabeth, an ordinance was made, that any *inhabitants* or *resiants* obstinately refusing any orders made for the better preservation of the town; or contemptuously misde-meaning themselves against the bailiff, *jurats*, or any of 1562.

* Burghley Papers, Lansdowne MSS. No. 116, p. 9.

† This, for the reasons we have given before, is certainly not correct.

Elizabeth. them, should be commanded to ward, or otherwise punished for the same by their bodies or goods, and should be *disfranchised*, and lose to the use of the town 10*l.*—and if a foreigner, 13*l.* 6*s.* 8*d.*

H.fo. 33b. And Thomas Newstreate, for such a misdemeanor, was *disfranchised out* of this liberty and freedom of the corporation, and to stand as a *foreigner* from thenceforth until further consideration.

H.fo. 60b. It was also resolved, that, “whereas divers of the *inhabitants* were very slack in paying their accounts and other duties belonging to the town, to the great hindrance of the state thereof; it was therefore ordered, that all those *inhabitants* who were indebted to the town, upon their accounts or otherwise, should pay the same,” &c.

Amongst the entries of a list of *freemen*, who were made and sworn, it is entered thus:—

“Robert Holgate, 5*s.* because he was a *freeman* before.”

II. fo. 295b. And William Reeve was *disfranchised* for departing out of the *liberty*, when he was sent for by Mr. Willmot and Mr. Collins, &c.; and upon his humble submission to the house, they received him again to his former freedom; for which he was fined 10*s.*

Cinque
Ports.
1591.

In the 34th year of the same reign, a general bye-law was made for the *Cinque Ports*, that no *freeman of the ports* should enfranchise himself in any other place without the ports, by reason that no man could do a *bodily service* in two places at the same time.

1592. A person also was ordered to *relinquish his freedom* of *Maidstone*, or else to be *disfranchised at Hythe*.

NEWCASTLE-UPON-TYNE.

1575. An order made in the 17th year of Queen Elizabeth, by the mayor, ten aldermen and the sheriff of *Newcastle-upon-Tyne*, for the fellowship of the cooks there, explains, in a great degree, the real nature of those bodies. This fellowship is stated to have been time out of mind one of the most ancient *occupations* of the town:—but no doubt had not been

an ancient fellowship. Indeed the document itself admits, ^{Elizabeth.} that it lacked the authority of the mayor, aldermen and ^{1575.} sheriff, and ratification under seal, as other occupations by ancient usage, in the town had. From which it may reasonably be inferred, that the other fellowships had been created in the manner in which the mayor, aldermen and sheriff proceeded to ratify this fellowship, namely, by giving them *perpetual succession*, and other *corporate* powers;—as pleading, and being sued, by their joint name; and giving them power to elect yearly two wardens, and to enforce their fines under pain of being expelled the fellowship.—The greater part of which powers, the mayor, aldermen and sheriff had no authority to grant; for a corporation cannot make a corporation;—although it is said, it may make a guild or fraternity.*

C. J. Holt said, that “these sort of bodies were not corporations, but brotherhoods, to meet, and drink, and talk together; they are only voluntary associations.” So that, in fact, they were in law nothing more than the members of a particular trade, who were allowed by the general governing body of the town, to ascertain amongst themselves what free persons there were in their own trades, without the necessity of their going to the general body for that purpose. The municipal authorities relying upon their not admitting as free any persons who were not really of free condition.

It however would seem from this charter, that the members of the mysteries were not then necessarily burgesses; for it speaks of the good men *and* burgesses of the societies;—as if some of them were burgesses and others not.—And afterwards, merely of the “*men*” (homines) of the mysteries; and again, “the *good men of the mysteries*.” And that this imports they were not burgesses, seems to be confirmed by the fact, that the recorder, who is not one of the corporation, is described in the same manner, “*unum discretum virum*,” and not as a burgess—it being expressly provided, that he need not be one; and on that account he is exempted from fine for not taking upon himself the office.

* 49 Ass. p. 8, 49 Edw. III.; and see Comberbach, 372.

Elizabeth.

CHESTER.

1573. Some of the usurpations at this time practised by the select bodies of the corporations, and the manner in which they were effected and supported, and upon what pretences, may be ascertained from some of the records of Chester; from which it appears, that an information had been instituted respecting the election of aldermen, which alleged, that the mayor pretended, contrary to the effect of their charter, to *elect aldermen and common council*, by "the mayor and common council," whereas the charter limiteth the same to be
 Usage. by the "*mayor and citizens*." The answer to which was, that by the charter and *usage* the same were, and lawfully might be chosen by the *mayor and common council*; and that the choice so to be made, was a better manner of choosing than the other. And they set up the continual *usage*, and that it would be to the utter subversion of the state of this city, if the election should take place contrary to their former order, to the hindrance and defacing of the mayor and city's proceedings.

And the complainants were all held worthy to be *utterly disfranchised from the freedom of this city*, and never thereafter to be received as worthy members to enjoy the benefit of the liberties, or especially to be of the council of this city. Yet nevertheless, the mayor and council do protract and respite the final order to be taken of those *disfranchisements*, until the assembly next to be holden *within the said city*, with contentment, that if in the meantime, they or any of them, should deliver to the mayor in writing, a simple declaration of the true cause that moved them, and by whose procurement, and upon what occasion, acknowledging their offence in their so doing, with submission to the mayor and whole council, to stand to what punishment or fine they should take, touching their said misbehaviour, and with *protection* never in the like, or in any thing that may tend to the prejudice of the liberties of this city, to be devizen or partaken with others: that then the *mayor or council*, upon such submission, and the trial, whether the

same be simply or feigned, to stay their *disfranchisements*, ^{Elizabeth.} with putting them to such punishment, by fine or otherwise, as to the *mayor and council at that assembly*, upon due consideration of their submission, shall think most requisite and convenient.

In a case in the 25th year of Queen Elizabeth, respecting an apprentice in the city of *London*, a distinction is taken between a *citizen* and a *freeman*: the former being stated to be *such as inhabit within the city*.* London.
1583.

TRURO.

As the circumstances connected with the borough of Truro, are somewhat peculiar, it will be advisable to introduce them at this period when a charter is granted to the town.

The return of members to Parliament in the sixth year of Edward VI., was by the mayor, with the consent of the whole commonalty; and in the 26th of Elizabeth, it was by the mayor and *burgesses*. 1552.

1583.

It must be observed, that this is prior to the charter of Elizabeth:—there were no capital burgesses before that time:—and consequently those terms could not have meant the capital burgesses; but must be intended to denote the burgesses at large;—who were, as shown before, “*the inhabitants*.”

In the 31st of Elizabeth, the queen granted a charter to Truro, which commences by reciting that it was an ancient borough:—and that the mayor had been called by the name of the mayor of *Falmouth*. That the ports of Truro and Falmouth had fallen into decay, but that the *inhabitants* had endeavoured by all means to preserve the ports by cleaning and repairing them. And that the borough of Truro was the principal place for the coinage of tin. That the burgesses and *inhabitants* had enjoyed divers franchises by prescription and charters, as well by Reginald, Earl of Cornwall, and other lords of the borough, and divers kings. And that the *inhabitants* of the borough had besought her 1588.

* Moore's Rep. p. 135.

Elizabeth. majesty, for the better government and improvement of it,
 1588. to make the *inhabitants a body corporate and politic*. The queen therefore granted, that it from thenceforth, should be a free borough of itself, and that the "*inhabitants*" and their successors from thenceforth, should be a body *corporate and politic*, by the name of "*the mayor and burgesses of the borough of Truro*, in the county of Cornwall,"* with the usual corporate powers and a common seal.

24 Assis- That twenty-four of the most discreet and honest *inhabit-*
 tants. *ants* of the borough, should be assistants to the mayor.

Council. That the mayor and common council (apparently the 24 of the most discreet inhabitants, for none other had been mentioned), or the greater part of them, might make statutes and ordinances, &c., and impose penalties for enforcing them.

4 Aldermen That there should be selected four men of the better and most honest of the 24 capital burgesses, who should be called *aldermen* of the borough, and be chosen every year by the greater part of the twenty-four.

That there should be a recorder, steward, and two serjeants.

And that the mayor should be clerk of the market.

"That the mayor and *burgesses*† and their successors, whenever a Parliament should be assembled, should have authority,‡ or else (vel aliter) by their common council, or the greater part of them, to elect and nominate two discreet and honest men to be burgesses of the Parliament, to remain there at the charge and cost of the borough and the commonalty thereof," &c.

The first mayor, and the first 24 capital burgesses are then named and appointed: and are described as *inhabitants* of the borough.

* The words and import of this charter, like many others, must be altogether altered, before it can be contended, that it is not an incorporation of the *inhabitants*. In truth, this construction is so plain and obvious, that it would be considered a self-evident truism, and improper to be particularly insisted upon, had not usage and the decisions of the courts of law thrown doubt upon it.

† The capital burgesses had only been mentioned once before in the charter, and then coupled with the number 24, which leaves no possible doubt who were there meant. So also here it seems apparent, that the term burgesses, without any addition of the term "capital," or the number 24, can only mean the burgesses at large, or the *inhabitants*.

‡ The charter of East Looe is the same, see before, pp. 1255, 1256.

The mayor and recorder are empowered to be justices of Elizabeth. the peace. 1588.

And there is directed to be within the borough a common hall and council house, for the mayor and capital burgesses and common council, who were empowered to call a hall when they should think fit.

Four persons of the capital burgesses and *inhabitants* were Aldermen. named as the first aldermen of the borough.

If the mayor should die, be *absent*, or removed from his Mayor. office, during the time of his mayoralty, the common council were to assemble within twelve days, to elect another alderman to be mayor.

And if any of the capital burgesses or counsellors should die, or *go out of the borough to dwell*, or be removed, it should be lawful for the mayor and other capital burgesses to supply the vacancies from the *burgesses* of the borough. Capital burgesses.

Power was given to remove capital burgesses, and elect others from the burgesses and *inhabitants*.

Two honest and fit persons of the *burgesses and inhabitants* Constables. of the borough were to be *constables*.

The charter then confirms to the mayor and burgesses of Truro, and their successors, all their former possessions; which the aforesaid mayor and burgesses, or the *inhabitants* thereof, by whatsoever name or names, corporate or incorporate—or by whatsoever pretence of any corporation—or by reason or colour of any prescription, writing, or writings, by the space of 50 years last past or more, &c. had enjoyed. Confirmation.

Infangthef, &c., toll, &c., within the borough is then granted, (as by the charter of Reginald de Fitzroy).

The burgesses of the borough are not to be put with *men**

* *Homines*.—This term occurs so frequently in the ancient laws, and in charters and other documents, that it may be excusable to cite a passage showing its original application. In the treaty made between Henry II. and his sons, 1174, it is said,—“*Barones et homines sui qui recesserunt ab eo debent rehabere terras suas* :” and afterwards the king grants—“*quod omnes illi qui recesserunt ab eo post filium suum et in recessu suo forisfecerunt, in terra domini regis ad pacem ejus revertantur*. Ita quod de catallis, quæ asportaverunt in recessu suo, non respondent.” Hoveden, fol. 309 a, n. 30.

So in the treaty between Roderic, king of Connaught and Henry II., 1175,—Roderic is declared to be the king's liege *man*; and that he should be prepared to do him service, “*sicut homo suus et ut teneat terram suam ita bene*,” &c. Hoveden, 312 b, n. 20.

Elizabeth. out of their corporation, in any assise, juries, &c., out of the
 1588. borough of Truro, except for lands and tenements belonging to the borough.

And it is directed, that the burgesses and *inhabitants*, and their successors, should be quit and free from toll, anchorage, keyage, &c. &c. &c. throughout all England, except the city of London, suburbs, and liberties thereof.

Strangers. That no *stranger*, nor any person *inhabiting out of the borough* limits, and precincts thereof, should sell goods or merchandise within the borough, or liberties, without the consent or license of the mayor and capital burgesses.

Fine. The mayor and burgesses (that is, the inhabitants) were to levy to their *own use* and profit all fines and amercements.

Leet. Assise of bread and wine was also granted; and a *leet*,* or law-day, and view of frankpledge of all the *inhabitants* and *dwellers*† within the borough: and that the recorder for the law-day, or frankpledge, should be called the *steward*.

The attention of the reader has been drawn before to the plain construction of this charter, by which the "*inhabitants*" are expressly incorporated; and he will have seen, throughout the whole context, that the intent of it was to benefit the borough and its *inhabitants*—that the mayor's assistants were to be taken out of the *inhabitants*—that the first 24 were actually nominated out of that body—that if they *went to dwell out of the town*, they were to cease to be capital burgesses, and their vacancies filled from the burgesses and *inhabitants*; and, what is probably more convincing than all the rest, the *constables*, who by the common law must be *inhabitants*, are directed to be chosen in the same manner as the capital burgesses from the burgesses and *inhabitants*.

It is also a strong confirmation that the *inhabitants* were to be the burgesses—that the ancient court leet and view of frankpledge was to be held in the borough, at which *inhabi-*

* And presentments were made at the court *leet* of Truro with respect to the enjoyment by the *inhabitants* of the right of dredging for oysters, and other matters, as at Queenborough.

† All the *resiants* were to appear at the court leet; but the *freemen only* were to be sworn there; otherwise the lords would have to complain that their villains were seduced away from them, and improperly sworn at the leet, whereby, under the law in Glanville, they would be *disfranchised*.

tant householders, as resiants, owe their suits; and ought to

It should also be observed, *ter*, that if a person, elected to that office, he is to be compell sonment—neither of which c^oprecincts of the borough; and cumstance, as well as from th^e it is clear that the capital bu the borough—notwithstanding been allowed in modern times.

abstract

1330

Elizabeth.

inserted in Elizabeth. 1588.
the clause
directly, the que^e we^e hiting
the

The confirmation of the possessions which the *inhabitants* had enjoyed affords also a strong inference, particularly when coupled with the recollection of the former documents, to show that the privileges granted by “Reginald” to the *burghesses* of Truro had always been enjoyed by the *inhabitants*; and although there is a reference to a former corporation, by the loose general words which had become at this period so common, viz., “by whatsoever name or names incorporate, or by pretence of any corporation,” yet it is most clearly established in this borough, as in many others, in respect to which the same words have been used, that in point of fact there had been no previous incorporation—notwithstanding great pains were taken at this time to raise the inference that corporations existed by prescription.*

The exemption from *juries*, granted by this charter to the *burghesses*, affords also another strong ground for inferring that none but the *inhabitants* were to be *burghesses*, and that *all* of them were to be so—because this exemption could not be enjoyed by any one out of the borough: for if it might by one, it might by all: and so it might be made, in-

* This doctrine is the more extraordinary, because in the case of *Marlot v. Mascall*, Anderson, 202, 39th of Eliz., 1586, it was agreed by the court and bar, “That a corporation could only be made by the king’s letters patent, which at all times should be the rule and guide, from the words of the king contained therein; for it is the act of the king by which corporations are created, without whom they could not be: and a corporation cannot be made by *usage*, *prescription*, or *otherwise*.”—This case is also reported in 1 Leon. fol. 159. See also the same point, 49 Lib. Ass. fol. 8.

Elizabeth. out of the general exemption from juries—a power which
 1588. borough could not have legally granted. If, therefore, as
 to argued on a former occasion, there is a construction of
 this charter which is legal, and one which is not, the former
 should be adopted: which is, that the exemption was intended
 to be confined to the *inhabitants*—otherwise the illegal
 consequences suggested above would arise.

Again, it must extend to *all* the inhabitants, for it would
 be absurd, and highly inconvenient in practice, that some of
 the inhabitants should be exempt from juries for the county
 and others not; for how would the sheriff be able to know
 whom he might summon from the place, and whom not?
 The real ground of the king granting this exemption was,
 that, in consideration of the "*inhabitants*" serving as jurors
 within the borough, they should be exempt from serving for
 the same purpose in the county at large. A consideration
 which obviously applies in an equal degree to *all* the inhabitants;
 and accordingly it is found that this exemption has,
 in fact, been enjoyed by the *inhabitants* of Truro.

Toll. The same reasoning in effect would apply to the exemption
 from toll, although the grounds would be somewhat different;
 but considering the object and import of this charter, and its
 reference to that of "Reginald," it does not seem possible to
 doubt, but that this exemption was also intended to be confined
 to the *inhabitants*, and to include all of them.

It is true that it has been decided, that the *inhabitants* are
 liable, notwithstanding this exemption, to pay toll to the select
 body of the common council. Considering that the *inhabitants*
 are incorporated—that the charter is granted for their benefit,
 and not for that of the mayor and 24 capital burgesses only—
 and that the *inhabitants* under the express words of this clause
 must be exempt from toll in every other place but Truro, how
 it happens that the *inhabitants* can be liable to toll in their
 own borough, to this small portion of their own body, must
 be sought for in the circumstances of the case, to which the
 reader is referred in a subsequent

part of the history of this place, where it will be inserted in its chronological order—premising only, that the next clause in the charter is, “that no stranger or any person inhabiting “out of the borough”—(who then are the *strangers* but the persons *inhabiting out of the borough*? and who the *burgesses* but those *inhabiting within it*?)—“shall sell within the “borough without the license of the mayor and capital burgesses.” So that no *strangers* are to sell in the borough without the license of the mayor and 24 capital burgesses; and no burgess or *inhabitant* is to have goods landed there without paying toll to the same 24. A more unpropitious position for trade to be placed in, by a charter of the wise and liberal Queen Elizabeth—granted for the express purpose of benefiting the town—can hardly be conceived.

Elizabeth.
1568.

It only remains to observe upon the important clause in this charter relative to the election of members of Parliament; the language of which, it must be admitted, is in some degree ambiguous. However, the doubt which arises upon it, if any, will not materially affect the right of election, for reasons which will be hereafter shown.

Members
to Parlia-
ment.

The doubt arises upon the words “*vel aliter* :” *—the clause, providing that there shall be two burgesses of Parliament, directs, that “the mayor and burgesses shall have power, *or else* by their common council, or the greater part of them, to elect two burgesses to Parliament,” &c.

The construction of these words would seem to be, that the mayor and burgesses may elect either by themselves or else by the common council:—a provision neither illegal—unreasonable—nor contrary to usage. Not illegal—because, though all have the power to elect, any number who are present may do so—those absent, either waiving their right or impliedly delegating it to those who are present. Not un-

* “Volumus, &c. quod sint duo burgenses parlamenti prout antea usitatum fuit pro eodem burgo quodque predicti *major et burgenses* quandocumque parlamentum convocari contigerit virtute brevis nostri de electione burgensium parlamenti eis directi *vel aliter per eorum commune consilium* aut majorem partem eorundem ut prefertur habeant potestatem eligendi duos discretos et probos viros fore burgenses parlamenti et eodem interesse ad parlamentum *ad onera et custodiam dicti burgi et communis ejusdem.*”

Elizabeth. 1588. reasonable, for it is a principle of reason as well as of law, that, *Fas est cuicunque renunciare jus pro se introductum*. Not contrary to usage,—because there are abundant instances, from the earliest time, of elections made by small numbers—by the 12—the 24—or even by the common council—which, as long as it continued the mere exercise of a delegated power, capable of being abrogated, when necessary, by those who delegated it, was not inconsistent either with the constitution—sound reason—or public policy.

There seems, therefore, no extrinsic reason for rejecting this construction. But supposing it to be otherwise, and that the words “*vel aliter*” apply to the writ, or to the other preceding matter of the clause; and that the words were intended expressly to give to the common council the right of election—it is the clearest law, from the express authority of the Chippenham case,* that such a clause in the king’s charter *could not* alter the *right* of election. We have already seen that it was originally in the burgesses and commonalty at large, and was exercised by them from the 26th of Edward I., and therefore upon this broad, general, constitutional ground, this clause could not have the effect of giving the right to the common council,† and excluding the burgesses and inhabitants at large. Besides there is also another ground for this assertion, namely, that, as the burgesses and commonalty at large had enjoyed the right of returning members to Parliament, and their rights were in the reign of Henry VI. *confirmed by Parliament*, the king’s charter, though accepted by the inhabitants—could not alter that right, which is, as Lord Coke, and the election committee in the reign of James I. said, “for the general public good.”

* Glanv. p. 47.

† Much of the difficulty with respect to the rights and powers of the “*common councils*” would be removed, if the real nature of those bodies were duly considered. They have only a *delegated* authority from the body at large, for the ease and convenience of that body, and for the better despatch of business. It is justly said, that “*the common council*, properly speaking, is no part of the corporation, but is a body collateral to it, appointed for particular purposes,—such as, advising and assisting the mayor, and making bye-laws, &c.” Cro. Jac. 540. In Warren’s case; and in 2 Rolle’s Rep. 112. In the same case it is said, “the office is only to “give assistance and advice for the good of the city.” Et vide etiam ante, pp. 53, 61, 293, 303, 387, 551, 590, 981.

Up to this time, therefore, whatever the construction of the charter may be, it is clear that the right of returning members to Parliament for Truro was vested in the burgesses or *inhabitants* at large; and by the same construction and reasons, the *inhabitants* were the *burgesses*—of which, in truth, there can be no doubt, as there are not in this borough freemen, or any other class, to represent that body. By what acts and decisions this right was, like the others, gradually usurped by the select body, we shall hereafter point out.

The returns to Parliament before this time appear to have been under the seals of the respective parties to them: and clearly, therefore, do not import to be corporate acts. But the return of this date seems to be under the common seal: no doubt, in consequence of their having become incorporated under the charter of Elizabeth: but which, by the authority of the Chippenham case, ought not to have affected the right of returning members to Parliament.

As Truro has supplied us with so perfect a specimen of a *parliamentary* borough, whose charter is clear and express, and where the abuses are most distinct;—so will *Congleton* afford us a similar specimen of a borough not summoned to Parliament.

As to its early history, it is not mentioned in Domesday as a borough, nor did it ever return members to Parliament.

In the reign of Edward III., Henry de Lacey, Earl of Lincoln, granted to his *free burgesses* of *Congleton*,* that the town should be a free borough; that they should have a merchant guild; that they and their merchandises should be free from toll, stallage, &c.; that they should not plead or be impleaded of any plea as to their lands and tenements without the borough; that they should elect from among themselves a mayor, and other inferior officers; that they should hold peaceably and quietly their *burgages* for 6*d.* each,† and for every acre of land, 12*d.*; and that they might give,

* Harl. MSS., 2074, 194.

† See Domesday, *passim*.

Elizabeth. sell, and pledge them to whomsoever they would, except to men of religion, &c.

1525. A chasm occurs in the documents relative to this place till the 16th of Hen. VIII.,* when upon complaint made to the chancellor and council of the duchy of Lancaster, upon behalf of the mayor and commonalty of the town of Congleton, parcel of the duchy, that upon plaints and other suggestions made before the justices of assise, and other officers at Chester, they had compelled them at Congleton, and in other places within the liberty of the said duchy, to appear as well at Chester as at counties, eyres, sheriff's *tourns*, and other courts within the liberties of Chester, against their ancient charters to them by the kings of this realm granted, and confirmed by his majesty King Henry VIII., and against their custom time out of mind used, to the great oppression and unquietness of the tenants and *inhabitants* of the town of Congleton, and in breach of the liberties of the duchy; the chancellor and council of the court, not willing their ancient good customs, nor the liberties of the duchy, should be so usurped and broken, did, by process of injunction, under the seal of the duchy, will and require the justices of assise, and all other officers of Chester, as also charge them, that from thenceforth in nowise they should distrain any of the tenants and *inhabitants* of the town or lordship of Congleton aforesaid, within the liberties of the said duchy, to appear at Chester, or at any other of their *counties, eyres, hundreds, sheriff's tourns, or courts*, for any manner of cause contrary to their franchises and ancient customs.

1532. In the 24th year of Henry VIII., an injunction was issued† on the complaint of the mayor and *commonalty* of the town of Congleton, parcel of the duchy of Lancaster, that divers of the said inhabitants of Congleton had been distrained to appear at Chester, against their ancient charter and custom, time out of mind used, to their great oppression and unquietness, charging, from thenceforth, in nowise, to distrain any of the tenants and *inhabitants* of the town of Congleton, to

* Harl. MSS., 844, p. 18 b.

† Ibid. p. 14 b.

appear at Chester, or at any *counties, eyres, hundreds, sheriff's Elizabeth. tourns, or courts.*

Here, by the words of reference, "said inhabitants," it is manifest (and no other construction can be supported), that the word "*commonalty*" used above was intended to describe the body of the *inhabitants*—which construction is confirmed, as well by the general observations we have before made upon the nature of the grants of these privileges—as by the clause at the close of the former document, and of this injunction, which insists upon the exemption of the *inhabitants* of Congleton *from suit at the county courts, eyres, and hundred courts, out of their town; and from the sheriff's tourn:* because they did their suit royal at their *own leet*, and their other suit at the different courts of their own borough—an observation we have frequently had occasion to make with reference to the charters of other places. And it will be remembered, that the *exemption from suits of shires and hundreds* is not only the most ancient, but also the most general privilege granted in all the charters, English, Welch, Scotch, and Irish.*

We have already seen many instances in which Queen Elizabeth granted charters, reciting, that places had been long before incorporated; which statement we have shown to be inaccurate. We have another instance of the same kind in the 26th year of Queen Elizabeth, in a charter to this borough† which states, that the men and tenants had been from ancient time, a body corporate; for which there is no pretence. 1583.

It then recites, that from the variety of names by which they had been called, many inconveniences, &c. had arisen. And to take away such uncertainties and inconveniences, the burgesses had petitioned the queen for the better government of the town, and the burgesses and *inhabitants*, to reconstitute them into another body politic and corporate. And considering that it was an ancient and populous town, and that there should be one mode of government, &c. and

* See early charters of Ireland, among the Egerton MSS. in the British Museum.

† Harl. MSS. 844, &c. p. 10, and the Confirmation Rolls at the Rolls Chapel.

Elizabeth. hoping that if greater liberties were granted the *burgesses*
 1583. and *inhabitants*, and their successors, would feel themselves
 more especially bound to serve her, granted, that it should
 for ever be a free town, and that the *inhabitants* should for
 ever be a body corporate and politic, by the name of "the
 mayor and commonalty of the town of Congleton," &c.

Inhabitants
incorporated.

The charter then proceeds to grant the usual corporate
 Mayor. powers. And that there should be a *mayor*, to be chosen from
 amongst the *inhabitants*: and appoints Richard Greene, an
inhabitant, to be the first mayor, until another *inhabitant*
 should be presented and sworn into that office.

The charter confirms all former grants.

These words, "men and tenants," adopted in this charter,
 taken with reference to the former documents, clearly mean
 the *tenants* and *inhabitants*, who were the *burgesses*.

Although the charter asserts that Congleton had been
 from ancient times a corporation, it does not state, as in
 some of the former instances, that it had been so by pre-
 scription; which the previous documents show to be impos-
 sible; but it merely uses the expression "ab antiquo," to
 which it may be difficult to give a definite application.
 However, be it applicable to whatever former period it may,
 it is clear that it was untrue; and although Congleton was,
 as stated in the charter, an ancient town, it was not in-
 corporated, but the tenants and *inhabitants* as residing in the
 town, and enjoying a jurisdiction exclusive of the sheriff,
 possessed many privileges common to other boroughs and
 towns, although not incorporated.

Burgesses
and inha-
bitants.

Upon the expression "*burgesses and inhabitants*," we
 have before had occasion to remark. It is obvious, from
 the general tenor of this charter, as well as those we have
 before quoted, that the privileges which were granted for
 the purpose of the better government and regulation of the
 town, must, in order to insure their object, have been in-
 tended for the benefit and use of the *inhabitants*, otherwise
 the whole purpose of the charters would have been defeated;
 and accordingly the queen, in express and emphatic words,
 directs, that the *inhabitants* should, by the name of "the

mayor and commonalty," be the corporation; words so clear—so explicit—and so unambiguous—that nothing but the most determined perversion could have raised a doubt about their meaning; and yet such doubts have existed in some places, and have been acted upon even by the courts of law. Elizabeth.
1583.

But Congleton never having returned members to Parliament, there was not the same temptation to abuse its privileges for the purpose of procuring parliamentary influence; and therefore this, and some few other places, exhibit instances of the charters being acted upon according to the plain import of their terms, and the obvious intention of the grants. Whereas in other towns, having charters with precisely the same words, they have been tortured and perverted for the purpose of giving exclusive privileges to the select bodies, and supporting the *arbitrary election of burgesses*.

In the reigns of Henry VIII., Philip and Mary, and Queen Elizabeth, the privileges of Congleton were enjoyed Inhabitants by the *inhabitants*, who were called the burgesses, and the officers were selected from them.

Now if the charters of this place are compared with those that we have given of other towns and boroughs, it will be found that they are, in terms and substance, the same, although illegal usages have been permitted to give them a different application, and have produced the abuses of which complaint is now so general, but which could so easily be removed, and the real constitutions of the boroughs be observed, if the real intention of the charters was regarded, and they were construed according to the pure principles of our law, which is described in one of our reporters,* as "the most reasonable law upon earth, regarding the *effect* and *substance* of words more than the form of them; and taking the substance of words to imply the form thereof, rather than that the intent of the parties should be void."

The clauses which follow in the charter as to there being a mayor—the appointment of the first mayor, and the elections, as well annual, as those arising on vacancies, all confirm

* Plowden, 140, in *Browning v. Barton*.

Elizabeth. that the *inhabitants*, as such, were the burgesses, because the mayor is directed to be chosen from the *inhabitants*; the person first appointed mayor is described as an *inhabitant*, and he is to continue mayor till another *inhabitant* is elected.

Officers. There is also a provision in this charter which will illustrate some of our former observations. The mayor is to take his oath of office before his last predecessor, and *twelve* of the commonalty. Which will instantly occur to the reader as a striking confirmation of our former statements, that the borough and town jurisdiction was to be under the care of the *king's presiding officer* (the bailiff, reeve, or mayor), aided, in conformity with the practice of our early institutions, by a *jury* of the *inhabitants* of the place—in this manner most admirably and practically uniting the executive power, and the people themselves, in the due government of the towns, and the administration of the laws.

1585. In the 27th and 28th of Queen Elizabeth,* certain tenants
Bill. in Congleton exhibited their bill† in the chancery of the duchy, complaining—that whereas they and others, the queen's tenants of the duchy of Lancaster, by force of divers charters should be free of all manner of toll, stallage, &c.; and that the defendants distrained the tenants and *inhabitants* of the town of Congleton *dwelling there*, contrary to the tenor of
Answer. the said charters. To which complaint *answer* was made by the defendants, stating, amongst other things, that most of the inhabitants had been used to pay toll. Yet the bill and answer being by the chancellor and council of the court con-

Decree. sidered, it was determined, that “although it be true that *some of the town* have neglected to take the advantage of their liberties and privileges, that is not material or prejudicial to them.” And the answer not containing any sufficient matter to require toll of the said *inhabitants*, it was, therefore, by the chancellor and council of this court decreed, that the “complainants and all others, the tenants and *inha-*

* 27 & 28 Eliz. October 12th, M. T. Harl. MSS. 844, p. 17.

† Inter Ricardum Green Majorem de Congleton et communitatem ejusdem Villæ v. Thom. Beckett et al.

bitants of the town should from thenceforth be free, and discharged from all manner of toll, &c.” Elizabeth.

In the 29th year, the queen,* reciting the complaint and injunction made in the 16th of Henry VIII.—and that although the liberties, privileges, and exemptions had been granted, ratified, and confirmed by the queen’s highness to the *mayor and inhabitants of Congleton* aforesaid, yet one 1586.
John Mylner, of Chester, had of late caused process of subpoena, out of the exchequer of Chester, to be served upon the mayor for staying the appearance of one of the *inhabitants* of Congleton, upon process served upon him by a deputy of the said John Mylner, to appear in the exchequer at Chester, contrary to the tenor and effect of the ancient charters; upon which process, Mylner, in the further violation of the liberties and exemptions of the duchy, for the mayor’s non-appearance in the said exchequer at Chester, sued out divers process of contempt against the mayor. It was, therefore, ordered by the chancellor and council, that an attachment should be forthwith awarded out of the court, to attach the said John Mylner for the breach of the liberties and exemptions so often confirmed to the *mayor and burgesses of Congleton* under the seal of the court. This document again confirms the assertion, that the *inhabitants* of Congleton were, by the successive kings and queens, and by the courts, treated as the *burgesses* of the town. Inhabitants. Burgesses.

The chancellor and council of the duchy, speaking of the confirmation of Queen Elizabeth, describe it as made to the mayor and *inhabitants*; and the complaint is, that one of the *inhabitants* had been served with process, contrary to the ancient charters and privileges of the place. And they assert that “the liberties and exemptions had been often confirmed to the said mayor and *burgesses*, under the seal of “that court,”—thus treating the term “*burgess*” as synonymous with that of “*inhabitants*.” And it prohibits the party from further proceeding against the mayor, or any other of the *inhabitants*,—clearly establishing that the privileges extended to all who dwelt in the place, subject to

* Harl. MSS., 844, p. 186.

Elizabeth. the common law restrictions of paying scot and lot, and
 1586. being sworn and enrolled.

Inhabitants. In the same year, also, the decree in favour of the exemp-
 tion of the *inhabitants* from tolls, was further enforced by an
 order of the queen herself.*

Court
 leet. Further particulars of the *court leet*, and of the municipal
 constitution of Congleton, and of the abuses introduced into
 it, may be collected from the following resolutions† (amongst
 others) of Mr. Atkinson, for the town of Congleton to the
 1592. questions following; in Hilary term, in the 35th of Queen
 Elizabeth.

Queen. "The form of the proclamation of the court hath been in
 the *queen's name*,‡ and Sir John Savage, *steward*, there; that
 the *court leet*§ and court baron should be holden, &c. *Query*,
 Whether the proclamation should not be only in the queen's
 name, and not in the steward's?

"In the queen's name only.¶ For it is danger to make
 proclamation in the name of a subject.

Usage. "The *steward* or his deputy of late time hath taken upon
 him to associate the mayor in walking the fairs in Congle-
 ton. *Query*, Whether he so might, for the usage hath com-
 menced since man's memory.

"If it hath been used time out of mind, whereof no
 memory is to the contrary, so it ought to continue.

Elizors. "The *steward*, within thirty years past, used to nominate
 one person in court, and the mayor another, and these two
 were sworn to *eleze* and name so many more unto them as
 shall make a *jury*, to inquire for the queen at the *leet*; and

* Harl. MSS., 844, p. 20.

† Harl. MSS., 844, p. 24.

‡ A person was fined for saying, that the court leet was the court of the mayor.
 See Sir Thomas Jones, 229, in *Berrington v. Brookes*.

§ That the *court leet* was in full use, at this time, in other places, may also be
 seen by many cases relative to them in the reports of the courts of law at this
 period.—See 2 Leon., p. 74, Lawson and Hare's case, in which a *court leet*
 and the *leet fee* are both mentioned, as well as the *sheriff's tourn*. And at *Liverpool*
 there were also presentments by the *court leet jury* during this reign. See also
 Owen's Reports, p. 35; 2 Leon. 206, 30th Eliz. 1587; 4th Leon. 216, 32 Eliz.
 1589; 33 Eliz. 1590; Cro. Eliz. 581, 37 Eliz. 1594.

¶ 4 Leon. 104, 29 Eliz. 1586. Exception was taken that a court before which
 perjury was alleged, was described as "the *leet* of the Earl of Bath—whereas every
leet is the king's court, although another may have the profits."

after verdict the steward named one of the jury, and the mayor another, to be sworn to assess fines upon the presentment. Nevertheless, of late time, the *steward* hath made choice of them all himself, without the mayor. *Query*, Whether, therein, the steward do wrong unto the mayor, and if it be a wrong, then, how to reform it?

Elizabeth

1592.

“The mayor ought to join with him. It must be reformed by complaint in the duchy.

“The burgesses of Congleton, before and since the time of memory, have used to be free from paying any fees to the *steward in court* for bonds for peace; and for releasing from the peace in the *leet*: and also every burgess hath had during like time, freedom in entering, or on swearing actions in the court baron, without any fee, therefore, to the steward; until now of late, within these few years, that the deputy steward urgeth them to fees therein. *Query*, Whether this be a wrong, and how it may be reformed? *Query*, Whether this prescription be lost?

Fees.

“It is a wrong, and they may indict the steward of extortion. No prescription is lost, because it is the less part of lx years; and the interruption being by wrong, and claim still made to the contrary, taketh not away the lawful prescription that was before.

Prescription.

“In our charter are these words, ‘Et si aliquis eorum in misericordiam nostram incederit, ante iudicium per defectum non excedat xii^d. et post iudicium rationabilem misericordiam secundum quantitatem delicti.’ *Query*, the exposition and interpretation hereof?

“This is meant of complaints that be affirmed in the court baron; and not for the *leet*; because there be no judgments there.

Court baron.

“*Query*, Whether the mayor upon court days may take place of the steward in going into the court house, and until they come to the bench, and upon the bench, and in other places of the town, or not?

“The *steward* is chief officer in both courts.

“*Query*, Whether the mayor be a suitor to the court, and if he be, whether he may sit upon the bench with the steward upon the court days, and on the better hand or not?

Elizabeth. "He is a *suitor*. In respect of the office, he is chief; in
1592. respect of his *resiance*, but as another person.

"Where it is incident to the charge of a *leet* (an authority given by divers statutes) to inquire of the assise of bread and ale; and of butchers, victuallers, artificers, tanners, carriers, shoemakers, offending contrary to the statute of 18 Edward II., chap. 5, et 2 Edward VI., chap. 10, and the same
Leet. has been used to be inquired of in the court *leet* of Congleton, and presented, fined and levied for the queen: *Query*,
Assembly. Whether now the mayor in his court of *assembly** may inquire of these defaults, and punish them, and levy their forfeitures, to those of the town or not: and, whether the steward ought not to be discharged thereof for any further inquiry or punishment of the same?

"See the statute of 19 Henry VII. chap. 7, by which it is ordained that no ordinance shall be allowed, unless the same be allowed by the justice of assise; or such other as are named in the same act."

Foreigners. The 11th question relates to trespasses done by cattle of *foreigners* upon the wastes of the town.

"*Query*, Whether the mayor ought to certify the bonds
Leet. and recognizances of the peace at the next *leet*, or when else may he certify them?

"At the *leet*, if he have so used. He cannot compel them to be bound, but may imprison the offenders for the peace at discretion.

Liberties. "*Query*, What liberties are incident to a free town, as Congleton is?

"They shall have such liberties as are granted them by
Prescription. charter. And such as they have *used* by *prescription*, so as they be not contrary to law, and none other.

"*Query*, Whether by force of our new grant or otherwise,
Courts. we be discharged from appearance at Halton hundred court and county court, and such like?

"They are exempted by the words of the old grant out of all the king's courts.

* This is a similar attempt to that made in the Cinque Ports—Queenborough—Colchester—and other places, to withdraw the matters proper for the court *leet* from that legitimate jurisdiction to the *corporate meetings*.

“ *Query*, Whether our aletaster ought to present default at the *queen’s court* or the mayor’s court, considering the fines are given in such cases to the mayor and commonalty ?

Elizabeth.

1592.

“ He ought to present at the *leet*, and the *queen* to have the benefit.

Leet.

“ Where the aletaster should take his oath—where the catchpole should take his oath ; and whether they may not be sworn by the mayor upon the day of his election ?

“ They ought to be sworn at the *leet*, and not by the mayor.

Leet.

“ At the last court *leet* of Congleton, C. D., a burgess, was called, and in his absence, the steward accepted his *essoyn*. The jury found and presented the same C. D. and A. B., the constables for the year following. The steward accepted the verdict, and swore *affeerors* who assessed the fines, and afterwards called for the new presented constables, and finding one of them to be absent, charged the jury to go together again, and present another in his stead, which they refused. Whereupon he set down a fine of 20*d.* a piece for this refusal.

Affeerors.

Query, How the office shall be executed until C. D. be sworn ; and when he may be sworn ; and whether the mayor at his *court of assembly* may give him another to execute the office ; or must it be respited until the next court leet ?

Assembly.

Query, Whether this fine be a wrong, and if it be, how it shall be avoided ?

“ It must now be executed solely by him that was sworn. C. D. may be sworn at the next *leet*. The mayor may not swear him. The fine, if the case be true, is a wrong ; and to be avoided in the duchy court.

Leet.

“ *We are the queen’s tenants in burgage tenure.* If foreigners trespass upon our commons. *Query*, Quid faciendum ?

“ Impound them damage fesant.”

A charter to Congleton, in the 22nd year of James I.,* recites, that the *burgesses* and *freemen* of Congleton had enjoyed, from time immemorial, by divers names, privileges as well by charters as by prescription ; and grants that the mayor and *commonalty*, by whatsoever name or names they are now incorporated, or were heretofore incorporated, should

1624.

*. Pat. 22 Jac. I.

Elizabeth. be from thenceforth one body corporate and politic, by the name of "the mayor, aldermen, and burgesses of the borough of Congleton."

That it should be a free borough, with the usual corporate powers. That one of the burgesses *inhabiting* and *residing* in the borough, should be elected mayor; and eight burgesses be elected aldermen; and 16, or a less number, of the burgesses and freemen *inhabiting* or *resident*, to be called the capital burgesses. That the mayor, aldermen, and capital burgesses, should be the common council; and should frame bye-laws.

And power is given to the mayor, aldermen, and their successors, to elect, of the most honest and discreet freemen *inhabiting* and *residing* within the borough, not exceeding 16, to be the first capital burgesses.

A chief steward was appointed, and a town clerk. The mayor and two aldermen to be justices: with a general confirmation of former privileges.

And this charter closes the municipal documents of Congleton.

Statute.
1585.
Cap. 13.

The statute of hue and cry, of the 27th of Queen Elizabeth, in the preamble and enacting clauses, mentions the *inhabitants* and *resiants* in hundreds and counties as the persons liable to be charged. And the fifth section imposes the charge upon every *inhabitant* and *dweller*, which is to be confirmed by the constables and headboroughs.

GRANTHAM.

1586. That the wages of the members for Grantham were even to this time paid by the inhabitants of Grantham, may be collected from the following extract from the Journals of the Parliament of the 28th and 29th of Queen Elizabeth, respecting Mr. Hall, who had been proceeded against for a libel on the House.*

On Friday, the 2nd day of December, upon a motion this day renewed, on the behalf of the *inhabitants* of the borough

* D'Ewes' Journal, p. 407.

of Grantham, touching a writ brought against them by Elizabeth. Arthur Hall, Esq., whereby he demandeth wages of the *inhabitants*, for his service done for them, as their Burgess in attendance at sundry Parliaments: forasmuch as it is alleged, that the said Arthur Hall hath been heretofore *disabled* by this House, to be at any time afterwards a member of it—and also that he hath *neither been free of the corporation of the borough*—and also hath not given any attendance in Parliament at all—it is ordered, that the examination thereof be committed to certain members named, who moved the lord chancellor to stay the granting of any attachment, or other process against the *inhabitants*, for the wages, at the suit of the said Arthur Hall; which was granted accordingly.

We have before seen, that the *inhabitants* were mentioned Inhabitants in the charter of Edward IV.,* which first *incorporated* this place. And that in a subsequent document, in the reign of Richard III.,† the former incorporation was not alluded to, as, in truth, by no means material to its municipal government.

Here, although the wages are not obtained from the *inhabitants*, no person disputed their liability to pay them, if they were due at all. And if so, it would seem strange that they should not be entitled to vote for the members they were to pay.

And yet, in 1711, upon no satisfactory evidence, the right 1711. of election was determined to be in the *freemen*. Freemen.

In 1730, this usurpation was carried still further, by its 1730. being decided, that the *freemen, resident or non-resident*, Non-residents. could vote: so totally was the real right of the *inhabitants* disregarded; who, in 1697, had petitioned both against the admission and right to vote of *strangers*, whose claim was Strangers. stated, as we have seen before to have been the case in other places, under pretence of a charter of James II., which he James II. afterwards revoked; and from which illegal source, no doubt this usurpation was derived.

* See before, p. 970.

† See before, p. 1034.

Elizabeth.

COLCHESTER.

The nature and extent of the queen's interference with the parliamentary elections,* may be collected from the following statement as to *Colchester*, respecting an occurrence in the

1584. 26th year of Queen Elizabeth.

Nomina-
tion of
members.

The bailiffs, aldermen, and common council, to serve the queen's grace, and get rid of all trouble, made the following extraordinary order,—“That Sir Francis Walsingham shall have the nomination of both the *burgesses* of the town for the *Parliament*, for time to come, according to his honour's letters to the bailiffs, aldermen, and common council of the town, directed.” Whereupon, two persons were returned according to the order.

Other constitutions were also made for Colchester in 1587. the 29th year of this reign, at the “*mote hall*,” to remove certain doubts with respect to the elections, and *Burgesses*. the qualifications for *burgesses*, which are repeated with some slight alteration of language, though the same in substance. They are described (in conformity with the common law, and the doctrine we have maintained) as the whole “*commonalty, burgesses, and freemen* there:”—that is to say, “all manner of persons householders *dwelling* within the borough, being *sworn* to the queen's majesty and the borough, paying and bearing *scot and lot* to the town; except common innholders, bakers, brewers, butchers, victuallers, chamberers, journeymen, men's children not householders in their own persons,—such persons as have received punishment—or have been convicted for adultery, fornication, drunkenness, theft, or as common swearers,—or persons receiving or asking relief of others to relieve their poverty.” Nothing can be more consistent with the common law, than the exceptions, as well as the qualifications here stated.

The “common innholders, bakers, &c.,” are excepted,

* The queen also interposed in the *municipal* affairs of the cities and boroughs :—thus, in the 29th year of her reign, she ordered, contrary both to the general law, and the then practice of the city of London, a stranger born to be admitted to the freedom of the *Salters' Company*.—*Jo: r.* 22, fol. 101.

because the assise of bread and beer, and the due regulation ^{Elizabeth.} of the inns or hostels, and all matters connected with the public supply of provisions,—were parts of the inquiry at the court leet: and therefore it would have been improper that they should attend and serve upon the juries there, being themselves participators in the subjects of inquiry,—and for the same reason, in modern times, such persons are excluded from many offices and functions, for which otherwise they would be eligible—as magistrates, constables, &c.

All the enumerated persons, are by these constitutions and ^{Mote hall.} the common law, called upon to attend on the proper days at the “mote hall,” “and any making default were to be fined 12d.” according to the law of the court leet.

They are also directed to elect “four headmen, being *free burgesses* and *inhabitants*,—one out of each ward:—who “are to elect five other honest and discreet *free burgesses*,—“and the 24 are to elect 10 aldermen, out of which two “bailiffs, and four justices of the peace, with two coroners, “and two clavers, are to be chosen.”

Notwithstanding these decisive declarations as to the class ^{Burgesses.} of persons who were to be the *burgesses*:—and notwithstanding a decision in 1696, in conformity with them—that the right of election was in the *sworn burgesses*:—and a resolution in 1710, against the power of the mayor to make *foreigners* free of the borough:—the right has since been determined to be in the *free burgesses*:—the power of making foreigners ^{1714.} free has been decided to be in the mayor and free burgesses:—and the practice has been for the *non-residents* to vote, to ^{Non-resi-} the destruction of the rights of the *inhabitants*. ^{dents.}

Besides these places, the right of which to return members to Parliament was questioned in the 5th and 13th years of Queen Elizabeth, 12 other boroughs first commenced returning members in this reign; and three others were restored. The former were,—

1.—CALLINGTON.

Callington, which returned in the 27th of Elizabeth; but ^{1584.} like the other boroughs in Cornwall, it is not mentioned in

Elizabeth. Domesday: nor is there any reason to think that it was a borough by prescription—nor is it incorporated.

Portreeve. The portreeve is the returning officer, who is appointed at Courtleet. the *court leet*.

There are no records relative to the burgesses, nor the elections; but as a proof of the indiscriminate manner in which the term *mayor* is often used; it is stated in the 1685. journals in the beginning of the reign of James II., that Sir Mayor. John Corriton was unseated because he was *mayor* at the time of his election; and yet the *portreeve* had, as we have observed above, always been the returning officer.

The right of election is, in fact, substantially exercised by the *inhabitant householders paying scot and lot*.

2.—BEREALSTON.

1584. Members were also returned for *Berealston* in the same year as Callington. This borough is not mentioned in Domesday—neither is it a borough by prescription, nor has Portreeve. it any corporation; but the returning officer is the *portreeve*, and he and the other borough officers are appointed at the *court leet*.

1587. Nomina-
tion of
members. In the 30th year of this reign,* the mayor and burgesses are stated, in the return at the Rolls' chapel, to have elected Richard Spencer, Esq. and Thomas Ferdinand Clarke, Esq. at the request of William, Marquis of Winchester, and William Lord Mountjoye, chief lords of the borough. A decisive proof of the direct influence which prevailed in this borough so soon after it was first summoned to Parliament.

1640. Inhabitants In the 16th of Charles I., the election for this place came before the committee of privileges; and Mr. Jones reported, that the election had been made after due notice to the *inhabitants*, and the question turned upon, whether the election had been conditional or not. It was determined, that "elections ought to be free; and that a condition to an election was void, and against law. But that the election was good, and without any conditions."

* See afterwards, Gatton and Old Sarum.—Southwell MSS.—Orrery—Campbell and Walpole Papers.

Upon the Restoration, another report was made by the Elizabeth.
committee of privileges, that two persons had been returned 1660.
by the *freemen*, who, in a second report in the same year, Freemen.
were called *burgesses*. Burgesses.

Five years afterwards, the sheriff of Devon was directed to 1666.
be taken into custody for his abuse, in refusing to make a
return of the writ for a new member for this borough.

In the eighth of George I., a petition was presented by 1721.
several of the *free burgesses*, stating, that the right of election Right.
was in them, or freehold tenants of burgage lands, paying
3*d.* yearly ancient rent to the lord of the borough. But
that the *portreeve*, who was one of the commissioners of the Portreeve.
excise, had introduced himself into the office of portreeve,
and did thereby, with a design to subvert the ancient method
of election, refuse legal, and admit illegal, votes.

Upon the examination of the question, several returns are
stated to have been produced in evidence, and the committee
resolved, that the right was "in the *freehold tenants*, holding Right.
"by *burgage tenure*, and paying 3*d.* per annum, or more,
"ancient burgage rent, to the lord of the borough—and in
"them only." Upon which the sitting member declined
further maintaining his seat, and the portreeve, who had re-
fused to receive the return made by the freehold tenants, was
ordered by the House to execute it; and the clerk of the
crown was directed to receive it.

It is impossible to account for this decision of the com-
mittee, unless indeed it is considered, that the right they
established was asserted in the petition, on the one hand, and
does not appear to have been controverted on the other. No
evidence was adduced in support of it; and we have already
shown, on general grounds, that there is no pretence for
maintaining this right with respect to any particular bo-
rough, inasmuch as that it was the universal tenure: and if
it prevailed in one place, it should in all. It is the more
strange that *this right* of election, which is generally affirmed
to belong to the more ancient boroughs, should have been
attributed to a place so recently summoned for the first time.

The result of this unfounded determination was, that the

Elizabeth. borough came entirely under the control of those who possessed the lands in this borough; but it must at the same time be recorded of this place, that it has returned to Parliament, Mr. Serjeant Heywood, a great lawyer and constitutional member—the justly celebrated Lord Chief Justice Holt—and the Marquis of Wellesley.

The same confusion occurs in this borough as to the use of the title of *mayor*:—as in 1660 and 1661, the return is stated to have been made by that officer, although there is no ground for supposing that any legal authority was ever given for appointing a mayor; but the *portreeve* has always presided.

3.—CORFE CASTLE.

1571. *Corfe Castle* did not return members to Parliament till the 14th of Elizabeth, when its being summoned by the queen may probably be accounted for, from the circumstance of her having granted the lordship of the place to Sir Christopher Hatton.

This place does not appear to have been a borough by prescription; nor had any charter been granted to it before the 18th year of this reign, when the queen gave it the same privileges as those enjoyed by the Cinque Ports; and its burgesses were, like those of London and the Cinque Ports, called “barons.”

The charter by which the borough at present is governed, is one granted by Charles II.; under which the governance of the town is confided to one mayor and eight barons who have served the office of mayor; who is annually elected at the *court leet* of the lord of the manor.

Nomina-
tion of
members.

Corfe Castle, which thus began its parliamentary representation under the queen's favourite minister, afforded again, in the reign of James I., an instance of the effect of the powerful interference of Sir Edward Coke, the king's attorney-general, who applied to the barons to *return a person whom he recommended*; and their motives for adopting that recommendation may be collected from the following letter, in which, according to the fashion of the times, but as

far as appears, without any legal authority, they assumed to Elizabeth. themselves the title of a "corporation."

"Right worshipfull and our undoubted kinde friend. We the mayor and barons of the borough of Corff Castell, within the isle of Purbeck, in the county of Dorset, salute you in Christ. Forasmuch as at the request of the right worshipfull Sir Edward Coke, Knight, his majesty's attorney-generall, we have elected and nominated you to be one of the burgeses for our said borough, for the service in his majesty's most high courte of Parliament; and for the other, have chosen and elected this honest and kinde gentleman, Mr. Edward Dackham, our townsman, this bearer, a man of sufficient ability and livelihood. Our request therefore unto your worshipp is, that you would be well pleased to affoord him your kind assistance in furtheringe any such motion as might be thought beneficiall and for the good of our towne; as also in moving Sir Edward Coke, that by his good counsel and direction, a graunte from his excellent majestie may (if possible) be had, for the corroboration and confirmation of the auntient liberties of our borough, which we hold by charter; wherein, if you vouchsafe to manifest your love to our poore corporation, we shall have no cause at all to repent us of our choice in electing you; but gratefully to accept the same, and rest ever redie, to the utmost of our powers, in what we may, to make requital, as occasion shall be ministred. Thus commending yourself, and your serious affairs, to the blessinge of the Allmightie, doe most humbly take our leaves.

"Corfe Castle, 10 March 1603."

Signed by six persons, including the mayor.

Upon which Carew justly observes, "that this is an instance of persons in high stations intermeddling in the elections of members to serve in Parliament, which has always been looked upon as destructive of the freedom of election," and as such inserts it.

In the 31st of Charles II., a question arose whether the *freeholders* only of lands or houses paying scot and lot, or *all* 1679.

Elizabeth. the *freeholders* and *leaseholders* generally had the right to

Petitioner. vote.

1679.

For the petitioner witnesses proved, that the *freeholders*, *leaseholders*, and chattel leases, had always voted; and all tenants for 20 years or more; and that the mayor invited all to the election, as well *leaseholders* as *freeholders*.

And it appeared that some of the poor voters had been paid 1s., and some 1s. 6d. for their hindrance of work for half a day.

Sitting
Member.

On the other hand it was proved, that the freeholders paying scot and lot were entitled to vote; and it was said, that the barons, upon an application from the mayor, had declared the right so to be.

The committee unseated the sitting member, and seated the petitioner; in effect negating the exclusive right of the freeholders. The mayor was ordered into custody for his conduct at the election in returning the sitting member.

1698.

In the 10th year of William III., the election for this place again came before a committee, upon a petition which stated that one of the candidates, in order to get a majority of votes, had, by several conveyances, *multiplied votes*, contrary to the then late Act of Parliament; and the mayor had wrongfully admitted them.

Right.

The principal charge, however, upon this occasion was treating, which is not material to our inquiry; but it was stated, that the right of election was in the *lessee* for years, paying scot and lot; and *also* in the persons who had the freeholds in *reversion* upon such leases. Than which a more absurd right of election can hardly be supposed; as it appears to give the right to the land, and yet allows both persons—the lessee as well as the reversioner to vote for it. Which appears inconsistent in itself, and also militates against the obvious principle to which we have before alluded; that the burgesses could only be one class; and not, as has been suggested, both *lessees* and *freeholders*; particularly of the same property.

Some of the voters were objected to, as being the trustees of land belonging to the poor, and 14 were objected to as

split votes. But the candidate who had them was declared to be duly elected, and thus they were in effect supported. Eliza

In the same year, there was another petition by the magistrates, burgesses, and *inhabitants* of the borough; and upon the report the right of election was agreed to be "in those who have estates of inheritance, or freehold for years, determinable on life or lives, paying scot and lot."—This again varies from the right before adopted, and seems an anomalous confusion of freehold and chattel interest, hardly intelligible; and which led to much intricacy of proof with respect to the livery of seisin. 16
Rig

In the 5th of George I. the right of election was again agreed, in some respects more distinctly than on the former occasion; but still upon the whole involved in much complexity. It was stated "to be in such persons as were "seised in fee in possession or reversion of any messuage, "tenement, or corporeal hereditament in the borough; "and in such persons as are tenants for life or lives; and "for want of such freehold, in tenants for years, determinable upon life or lives, paying scot and lot, and in them "and no others." 17
Rig

Thus we see a place, first summoned by Queen Elizabeth, soon becoming subject to the direct influence of one of the law officers of the crown—and since characterized by the exercise of the most anomalous rights of election, involving that question in all the intricacies of title—conveyancing—and questions connected with real property—as well as introducing the illegal and unconstitutional practice of *non-resident* voters. Notwithstanding it appears from a case in the 4th of George III.,* that a *court leet* had been immemorially held within the borough, at which the *resiants* only would be the suitors—and where, consistently with the uniform history we have traced from the earliest times, the *resiants* ought to be *sworn* and *enrolled* as *burgesses*; and not at the court baron, which would be the result of their being freeholders, as assumed above in the arguments relative to the right of election. 176
Non-
den
Court

* 3 Bur. 1452, *Rex v. Banks*.

Elizabeth.

4.—NEWTON.

Newton in the Willows, in the county palatine of Lancaster, is also another place which first returned members to Parliament in this reign; it is not mentioned in Domesday; nor is there any reason to suppose it to be a borough by prescription; and it has never been incorporated.

There are few records relative to the municipal or parliamentary rights of this place.

There were only two petitions previous to the year 1797; and neither of them followed by any particular result, or affording any light as to the exercise of the elective franchise. But in 1797, *statements* as to the right of election, were delivered in by the contending parties, under the statute of the 28th of George III.

1797.
State-
ments.

Petitioner. That for the *petitioner* asserted, that “the right was exclusively vested in the freemen, or burgesses, of the borough—that is to say, in any house, building, or lands, within the borough, of the value of 40*s.* a year, and upwards; and in case of joint tenants, or tenants in common, no more than one person had a right to vote for one and the same house or tenement.” A claim very similar to that which we have previously quoted relative to Corfe Castle.

Sitting
member.

That for the sitting member, stated it to be “in persons having an estate of freehold, or for a term, or residue of a term, of 99 years or upwards, determinable on one or more life or lives, in any messuages, lands, or tenements, within the borough.”

Right. The committee decided the right to be exclusively vested “in the *freemen* or *burgesses*, of the borough—that is to say, in any person seised of a corporeal estate of freehold, in any house, building, or lands, within the borough, of the value of 40*s.* a year, and upwards; and in case of joint tenants, or tenants in common, no more than one person had a right to vote for one and the same house or tenement.”*

The petitioners’ statement alleged the right to be “in the

* 53 Journ. 146, col. 1.

"*freemen* or *burgesses*:"—a striking instance of the doubtful Elizabeth. uncertainty with which those terms were used.

If it meant that they were synonymous, we have shown before that such a supposition was inaccurate; because every *freeman*, or *liber homo*, was not a *burgess*, but only such as were *resident*, *paid scot and bore lot*, and had been *enrolled* and *sworn*.

If, on the other hand, it meant that they were separate classes; then it was erroneous, as supposing that the right could be in two classes of persons; and in assuming that the *freemen* could have any right.

The statement also included the necessity of the house being of the value of 40*s.*, which we have before shown to have been improperly applied to boroughs from the statute of Henry VI., which relates only to county elections.

The statement for the sitting members does not condescend to affirm, whether the voters were called *burgesses*, or *freemen*, or any other name.

The committee, in its determination, adopted the absurd expression in the petitioner's statement, of "*freemen*," or "*burgesses*," as well as the qualification of 40*s.* And by adopting the right of the freeholders, supported the interference of *non-resident* voters. Non-resi-
dents.

5.—CLITHEROE.

Clitheroe is another place in the county palatine of Lancaster, which also returned, for the first time, members to Parliament in the reign of Queen Elizabeth. It is not mentioned in Domesday:—but may have been a borough by prescription, as it had a charter granted to it in the reign of Edward I., which referred to the previous enjoyment of privileges, under his predecessors.*

It has never been incorporated—the returning officers are the two bailiffs,—and it has had, from time immemorial, a *court leet*. Court leet.

The inquiry respecting the *burgesses* of this place is somewhat curious. It turns almost entirely on the parliamentary

* See before, p. 545.

Elizabeth. decisions upon the right of election, which will appear to have been singularly in opposition to the ancient usages of the borough, and the evidence which was adduced on the successive investigations respecting it.

1660. On the Restoration, a report was made respecting this place, in which it was stated that the question was, "whether
 Freemen. "the *freemen at large*, or the *free burghers seised for life or in fee of borough lands or houses there*, had the right to elect "members to serve in Parliament;" and upon consideration of the testimonies, and other evidence, produced on both parts, the committee were of opinion,—That the said *free burghers*,
 Free burghers. Right. (and not the *freemen at large*) had the right to elect.

Both these statements of the right of election were inaccurate. The freemen at large without the qualifications of *paying scot and bearing lot*, and of being *sworn* and *enrolled*, could not have the right of election, for the reasons we have given before. Nor could the burgage freeholders, because that is confining it simply to a question of tenure,—the inapplication of which, we have previously shown:* and it also introduces the non-resident freeholders.

The determination therefore, cannot be relied upon, either for its legal or its constitutional accuracy.

But we will proceed with the inquiry into the further facts which appear respecting this place.

1661. In the next year, another report was made upon the petition of Mr. Pudsey against the election of Sir Ralph Ashton, and the question was upon the right of election,—whether such *freeholders as had estates for life or in fee*, OR the *freemen at large*, had the right of election; and the opinion of the committee was, that *according to the judgment given in the last Parliament*, it was in such *freeholders only as had estates for life or in fee*.

1693. In the fifth year of William and Mary, there was a petition of the bailiffs and burgesses, which speaks of the *in-bailiff*, and that the bailiffs had caused notice to be given to the *foreign* burgesses to attend; and that at the election, without reading the precept, or calling the court for the election, a

* Vide ante, p. 15, 480, et passim.

stranger adjourned the electors to the shambles, just as the Elizabeth. bailiffs and many others were coming into court, who demanded that the precept might be read, which was not done. And after reading the writ, all the electors were adjourned to the town hall, and elected John Weddal, Esq. And the return was made of him, and tendered to the sheriff, but he returned another person. 1693.

On the report it appears to have been *agreed* on both sides, Right agreed. that the right of election was in the *burgesses* AND *freemen*.

The "*burgesses*" were such as had, in any lands or houses in the borough, an estate of freehold or inheritance:* and they were of two sorts,—*out-burgesses*, that lived out of the borough, and *in-burgesses*, that lived in the borough, and had such estate in houses or land there: and both these had the right of electing.† Burgess.

The "*freemen*" were such as lived in the houses within the borough as tenants:—and they had the right of electing when the landlords did not vote for those houses;—but when they did, the tenants had no right. Freemen.

It was likewise agreed, that they had every year a *jury of inquiry*,‡ kept on foot for some time of the year, to *investigate the rights of the burgesses and freemen*; and, upon their finding, the persons found were entered in a book, called the "*call-book*," and *sworn*. And out of this jury the bailiffs were chosen.§ Jury.

It was also agreed, that Mr. Roger Manwaring, the bailiff who returned Mr. Gerrard, was *found a burgess* by that jury, and *entered* in the book and *sworn*. That there are two bailiffs, one called the *out-bailiff*; chosen by the *out-burgesses*; and the other the *in-bailiff*, chosen by the *in-burgesses*; and that the *out-bailiff* is the chief, and hath the precedence.

For the petitioners it was objected (amongst other things), Petitions.

* The same right was asserted in Bossinney.

† And a committee decided in the same manner in 1695, notwithstanding the two former decisions.

‡ Notwithstanding this was so agreed, the committees in 1695 and 1703, resolved against the petitioners who insisted on this finding; and to such resolutions in both the cases, the House agreed.

§ So likewise at Bossinney.

Elizabeth. that after the poll was ended, one proclamation was made,
1693. that all who had right to vote should come.

Sitting
member.

On Mr. Gerrard's behalf, it was testified,—That the *jury* of inquiry was discharged by a note under the hand of one of the bailiffs, when several burgesses and freemen were ready to tender themselves, to make out their right to be sworn; whereas the *jury* never used to be discharged but by both bailiffs,—That indirect means were used to hinder the *jury* from meeting for this purpose, and thereby Mr. Bradshaw, and others, were hindered from being *found* by the jury, and *sworn*, and *put in the call-book*, and thereby deprived of their votes at the election for members of Parliament.*

It was further stated, that exceptions were made at the election to many of the voters on each side.

One of the members said, infants could not be bailiffs.

Resolution.

The committee resolved,—Mr. Gerrard to be duly elected.

The House on division disagreed—and resolved, Mr. Weddal not duly elected,—and the election to be void.

It is scarcely possible that there should be a stronger instance, of the impropriety of adopting the right of election *agreed* upon by the parties, than this instance of Clitheroe.

Agreed
rights.

Such *agreements* are usually formed upon the interested views of the respective parties; who frequently by common consent exclude the real voters.

Nothing can be more absurd than the matters here agreed upon.

Burgesses.
Freemen.

First.—The right is stated to be in the *burgesses* AND *freemen*:—meaning by those terms, two different classes; which, for the reasons we have given before,† could not be the legal right.

Free-
holdem.

The “*burgesses*” are described as those who had freehold estates, in any lands or houses, in the borough,—which, founding the right on *tenure*, we have already shown to be incorrect.

The consequence of such a right would be, the introduc-

* But see the decisions in 1695 and 1703, when presentment appears not to have been held necessary.

† Vide ante, passim.

tion of *non-residents*, as is here expressly asserted; as the burgesses are said to be of two sorts; *out-burgesses* living out of the borough, and *in-burgesses* living within it:—contrary to the whole tenour of the law and history which we have traced.

Elizabeth.
1693.
Out-burgesses.
In-burgesses.

On the other hand, the "*freemen*" are described as those who *lived* in the houses within the borough as *tenants*—a definition of that term totally different from the common law, and never before occurring. Indeed the absurdity of that description is almost apparent in itself; as the mere living in a house as a tenant could not, under any hypothesis, make a person *free*. On the contrary, he might be a *villain*; and not a member of any corporation; nor connected with any trade or mystery.* So that neither under the ancient law, nor the modern practice, could such persons be considered as "*freemen*."

Freemen.

But the absurdity of this assertion is still further marked by the additional definition given of the rights of such persons. For they are said to have only a doubtful and precarious right of voting, depending upon the fact of *whether their landlords voted for the same houses or not*, than which it is impossible that any thing can be less like the law or practice of our constitution. Particularly if the writ is considered which directs the election to be by the "*burgesses*;" and it is too monstrous to suppose, that persons having so equivocal a right as is here described, should be the class intended by that term.

The further part of the agreement, which states the usage of the borough, to have yearly a *jury of inquiry*, bears a much nearer analogy to the law, and the principles and practice of the constitution; because they were, no doubt, the *jury* at the *court leet*: and, according to the law of that court, they *enrolled* the burgesses in the "*call-book*;" and

Jury.

* That freedom depended upon the *condition* of the person, and not upon residence, may be clearly collected from this fact, that in 30th of Elizabeth, a person was ordered to be admitted to the freedom of London by patrimony, although born out of the liberties—a fact important to be remembered also when considering the usages of other places, in many of which, in disregard of the real nature of freedom by *birth*, it is sometimes required that the freemen should be born within the borough.

Elizabeth. *swore* them : which we have before abundantly proved to be
 1693. the proper functions of the *jury* at the *court leet*. Thus, in this same agreement, we have the curious instance of both the absurdities and usurpations of modern usage, and the pure practice of our ancient law strangely blended together.

In consequence of the vacancy created by the above resolution, a new writ in 1693, making a void election, was ordered for the borough ; and other petitions were presented, there being a double return.

Right. A report was made upon these petitions, from which it appears, that the right of election was first considered, and it was *agreed* on both sides as before.

Exceptions were taken to 13 of the voters ; five because they were not found by the *jury* and *sworn* before the election ; also as to one that he was a Quaker, and was not *sworn*. Others that they were minors ; and some that they had sold their burgages.

William Oddy, said he had been town clerk six years, and knew the town 20 years :—and that it was the custom, that no *burgess* or *freeman* should vote but those *found* by the *inquiry jury* and *sworn* ; that he has been at several elections, and never heard it disputed. That the *jury* had been dismissed, and no new *jury* appointed before the election.

As to the persons excepted against, he testified that they were not *found* ; nor *sworn*. One had sold his burgage, and therefore was struck out of the *call-book*. As to others, that they had not offered themselves to the *jury* to be *found*.

Other witnesses said they had known the town, one 20, and the other 30 years ; and it was the custom that none should vote in elections but such as were found and sworn, *and never knew the custom disputed*, or right claimed, by persons not found and sworn, *till the last election*. And one of these instanced the cases of two persons who had burgage tenements, and did not vote, because not found and sworn.*

For Mr. Gerrard it was answered, that this custom was

* Yet Mr. Gerrard was seated against this right, although there was this evidence to support it.

void, because unreasonable—as putting too much in the power of the jury, or bailiffs, to hinder whoever they pleased from voting, though never so well entitled. Elizabeth.
1694.

Henry Bayly said, one of the inquiry-jury owned to him, that they *avoided meeting*, on purpose that Mallam, and the others objected to, for not being *found*, might not have an opportunity of being *found* and *sworn*; and there being 11 of the jury met, he absented himself, that they might not have a jury. That the town clerk owned to him, that Mallam, and the other mandamus-men, had a right; and declared he would have entered them, had they come to him. He also testified that they offered themselves to the jury, and were refused, yet voted at the last election; and some had given votes at the late elections for bailiffs, but he did not know they did it before. Believes they had their borough-holds since Mr. Parker's death—that they were received by one bailiff, but refused by another. Evidence.

Robinson said, that he was foreman of the inquiry-jury—that those objected to had lands in the borough, and tendered their writings to the jury. That Colebourn's right was *found*, and that he still continued to have it; in all other things belonging to the borough. That Nawell was a man grown; had borough-hold; and tendered himself to the jury. That Frankland lived still in his house, and so has the right, till another be entered in the book, by the custom:—that Parkinson lived in a free house, and had right, his landlord not voting.

Mr. Gerrard objected to Shuttleworth and Webster, as reversioners.

Robinson said, the two first were reversioners of burgage-houses, and two women had life estates therein; but it was answered, that where women have estates for life, and cannot vote, there the reversioners may. And *Oddy* proved this to be the custom; and that these were *found* by the jury, and *sworn*. *Robinson* owned he was of the jury who found Webster, and was for finding him, but is since better informed; and *Dudley*, another of Mr. Gerrard's witnesses, owned he was also of the jury, but against finding him.

Elizabeth. *Mr. Kenyon*, a member, spoke as to the custom of being
 1694. *found* by the inquiry-jury, and *sworn*. And that *Mr. Man-*
waring was yet a minor. That *Mallam*, and the other
 mandamus-men, bought their borough-holds to serve a turn
 —and *Robinson* sold them to them.

Resolution. Thereupon the committee resolved, That *Fitton Gerrard*,
Esq. was duly elected.

The observations before made upon the decision in 1693, apply equally to this. But it should be added, that from the nature of the evidence given upon this occasion, it is clear, that the ancient right of Clitheroe was for the *jury to find—enrol—and swear* the burgesses; as we have shown to be the practice under the ancient law.

And it is also evident, that in this case, as in others we have seen before, the attempts at usurpation and innovation,

Jury. are accompanied with efforts to get rid of the *jury* at the
Court leet. *court leet.*

Considering the uniform course, both of the principles and practice of the ancient law, it is curious to observe the bold assertion made in this case, “that the custom for the “*jury to present—enrol—and swear* the burgesses, was void, “because it was unreasonable, as putting too much in the “power of the jury.” A declaration in direct defiance of the *Mirror*, and the other ancient authors; and which if made now, with respect to the trial by jury—which stands upon the same foundation, and is open to the same observation—would probably draw down upon the assertor, the just odium which such a position would merit.

1695. In the seventh year of *William III.*, another petition and report occur; from which it appears, that the right was agreed to be, in substance, as before stated.

Petitioner. But the petitioner insisted that, at the late election, the bailiffs had refused to call an inquiry-jury; by which means, several who ought to be found as burgesses and freemen, were not found, whereby he lost several votes.

Evidence. Amongst other evidence, a witness stated, that he had searched the records of the town, and found inquiry-juries had been called in November, December, January, February,

March, and April; and on the 11th of October, he desired of Mr. Bailiff Whitaker, to have an inquiry-jury, which he refused: and said it was in their power; and that Mr. Stringer should not be member of Parliament: and the said *Dugdale*, *Robinson*, and *Deane* said, that on the 25th of October, they, with several persons, went to Bailiff Lister, and desired him to call an inquiry-jury, who said he would call a hall, and consider it—but did neither.

Elizabeth.

1696.

Deane and others said, Mr. Pudsey, and Mr. Walbank, his agent, told them, if they would be for Mr. Pudsey, there should be a jury called, and they should have good voices.

Tray said, he went with the petitioner to Clitheroe, and was at the election; that he told the bailiffs of several freemen, who would vote—but was answered, they would call none but what were in their call-book, and as they were there.

Deane said, it had been found by the inquiry-jury, that the landlord did vote; but not for this house:—that he was not found for the house he lived in; but, about three weeks before the election, and before the proclamation for the dissolution of the Parliament, he had tendered 4*d.* to the town clerk, to enter his name.

Dugdale and *Robinson* said, that Henry Baily was heir by descent to a burgage-house; but not found.

Coulters said, he had been found and sworn, but was since removed; but offered 4*d.* to the town clerk, to have his name inserted.

For Mr. Pudsey, the sitting member, it was insisted, that the inquiry-jury were discharged fairly, according to the custom; and many who would have voted for Mr. Pudsey had been found, if there had been an inquiry-jury in being. And it was proved, that the custom of the borough was to call the grand jury about Candlemas, and discharge it about Michaelmas. That this year it was discharged at the usual time, for the want of business. That if a freeman removed to another burgage-house, he ought to be found again. And the demands of some of the voters to be found by the jury were negatived, and the title of others disputed.

Sitting
member.

Elizabeth. Upon the whole, the committee resolved, That Ambrose
1696. Pudsey, Esq., (sitting member,) is duly elected a burgess to
Resolution. serve in this present Parliament for this borough: which
was agreed to by the House.

In this inquiry, we have further proof of the disposition to get rid of the *jury* at the *court leet*; and to prevent their exercising their functions, by omitting to impanel them.

1708. In the second year of the reign of Queen Anne, there was another report relative to Clitheroe; from which it appeared, that the petitioner insisted upon a right of election, in substance the same as that previously stated.

On the other hand, the sitting members denied that it was necessary for the burgesses to be *presented* or *sworn*.

The petitioner called witnesses to prove the necessity of the presentment and oath:—and they justly added, that the *bailiff ought to swear such as were presented*. An accurate description of what the ancient law required in this respect: to which the sitting members seem to have yielded, as they gave no further evidence upon the point, but left the judgment to the committee.

Petitioner. The petitioner's counsel objected to several polled for the sitting members, who were not sworn burgesses; and their counsel admitted the fact as to 17, but insisted that they were good burgesses, and so *presented*, and ought to have been *sworn*, but were refused by the bailiff; and called Dugdale and Farrar, who said, that about 12 of them were *found* by the jury of inquiry, the beginning of May, and that in June they demanded a court of the bailiffs to *swear* them; but one of the bailiffs refused, saying, "he did not value the Parliament," and adjourned the court till the 3d of August, the election being on the 28th. Yet on the application of Colonel Stringer and Mr. Pudsey to Mr. Lister, the other bailiff, on the 20th of July, and upon giving him a note to save him harmless, he declaring some fear of the Earl of Montague, and his interest, he called a court and swore those 12 burgesses.

Resolution. Upon the whole, the committee resolved, that the sitting members were duly elected.

In the 9th of George I., a petition was presented by the *Elizabeth.*
inquiry-jury, setting forth the usage of the borough, for the burgesses to be *presented, enrolled and sworn* at the court, 1722.
in the manner before stated; but no further proceedings were had upon that petition, nor has any subsequent decision taken place with respect to the right of election for this place.

6.—BISHOP'S CASTLE.

Bishop's Castle was incorporated in the 15th year of Queen Elizabeth; and in the 27th year of her reign, it was summoned to return members to Parliament. 1572.
1584.

In the 11th year of William III. it was *agreed*, that the right of election was "in the bailiff and all burgesses inhabiting within the borough, to the exclusion of the *out-burgesses or country-burgesses*;" on which ground some of the votes, which had been tendered, were objected to. 1689.
Right agreed.

The principal inquiry, however, upon this occasion was with respect to bribery, which, within a little more than a century, had grown to such a height within the borough, that a special report was made, that the burgesses had been notoriously guilty of that offence. In consequence of which the bad precedent of the House of Commons taking upon itself, as a matter of punishment, to withhold the writ, was adopted.

Similar allegations, as to bribery, were investigated in the 13th of William III., and followed by a resolution, that one of the candidates had been guilty of gross bribery, and the writ was a second time suspended. 1701.

In the 17th of George I. another investigation was had respecting bribery committed at the elections of this borough, and the sitting member was displaced. 1726.

7.—HARWICH.

In the 44th of Queen Elizabeth, complaint was made to the House of Commons, that *Harwich*, in Essex, and *Newtown*, in the county of Southampton, had returned members to Parliament,* which, it was alleged, they had never done before. 1601.

* D'Ewes' Journ. p. 628.

Elizabeth. This as to *Harwich*, appears to be inaccurate, as it had made a return in the 17th of Edward III.*

1343. This place is not mentioned in Domesday: nor does there appear to be any reason for assuming it to be a borough by prescription. It was first made so in the reign of Edward II., by Thomas Brotherton, Earl of Norfolk and Marshal of England; but it was not *incorporated* until the reign of James I., by the interest of Sir Edward Coke, the then attorney-general, who, we have before seen, *nominated the burgesses for Corfe Castle*. That charter was afterwards confirmed in the reign of Charles II., through the mediation of Sir Harbottle Grimston, then their recorder and master of the rolls. It is now the governing charter; under which the town has a mayor—recorder—high steward—eight aldermen—and 24 capital burgesses.

1708. In the seventh year of Queen Anne, the election for Harwich was the subject of inquiry, but nothing materially connected with the question as to the right of burgess-ship occurred in the course of the investigation.

1713. In the 12th year of the same reign there was a report, from Petitioner. which it appears the petitioner insisted, that the right of election was “in the mayor, aldermen and capital burgesses *residing* within the borough; and *when a capital burgess removed from the borough, his place was ipso facto void.*”

Another petitioner insisted that the right was in the mayor, aldermen, and capital burgesses at large;† and that an order of the corporation for disfranchisement was necessary when a capital burgess was removed from the borough, otherwise his place was not void.

To prove the *avoidance by non-residence* the charter was given in evidence, which requires the capital burgesses to be “*inhabitantes et residentes.*”

1658. In 1658 and 1661, it appeared that two persons were
1661. elected into the places of others who had removed out of town; and a person who had been *steward* of the borough

* 4 Pryne, 100%.

† The reader may consider which is the most reasonable and correct of these assertions; and will, no doubt, remember the decision in the case of Traro.

for 40 years, stated, that the right of election was "in the Elizabeth.
"mayor, aldermen, and capital burgesses or *headboroughs*, 1713.
"residing within the borough, and no others"—that it had Head-
always been practised when a capital burgess *left the town* boroughs.
totally, and had *no family at residence there*, he ceased to
be a capital burgess—that they made no order for disfran-
chising him, but his place was, ipso facto, void. And he
spoke of several instances 20 years ago, when others were
chosen in the place of those who had removed. But he
mentioned a person who acted as a capital burgess after he
went out of the town, adding, that the non-residents were
not then disputed. And there were two others who acted as
capital burgesses though they were only *lodgers* in the town. Lodgers.

The committee appeared to have yielded to the evidence
of the *steward*. And the *exclusive right* of the *select body* Right.
not being questioned, they decided that it was "in the
"mayor, aldermen, capital burgesses or *headboroughs resid-*
ing within the borough." The case afterwards turned
upon the evidence which was given on the one side or the
other in proof or denial of *non-residence*.

In the same year, it appears from a report, that the right 1713.
was agreed between the parties, to be as in the last decision;
and the steward's evidence on the former occasion, was read
before the committee.

8.—NEWTOWN.

The other place whose right to return members to Parlia-
ment was contested at the same time with Harwich, was New-
town, in the Isle of Wight. It is not mentioned in Domesday,
nor are there any satisfactory reasons for supposing that it was
a borough by prescription. Its ancient name was *Franchiseville*,
by which we have seen it had received a charter in the
reign of Edward I.:—but it has no corporation.*

It did not return members to Parliament until the 27th 1584.
year of Queen Elizabeth. Since which, although there have
been some petitions respecting the elections, there has been
but one decision as to the right of voting, which gave it to

* Vide ante, p. 529.

Elizabeth. "the burgesses, having borough lands within the borough."

1729. Upon what evidence, or upon what supposed ground this determination was founded does not appear; but it in effect placed the borough amongst those in which the burghage tenure right prevails:—the erroneous and unconstitutional nature of which we have already shown. It only remains to add, that by this means Newtown was placed upon nearly the same footing as Old Sarum, Gatton and Midhurst, in which the voters were either really, or in effect, reduced to the smallest possible number:—a single elector only at one period residing in the place.

9.—LYMINGTON.

Lymington was first summoned to return members to Parliament in the 26th of Queen Elizabeth. It is not mentioned in Domesday, nor is there any reason for thinking that it was a *borough* by prescription; it certainly was not a corporation by that title. Its presiding officer has long been Mayor. called a "*mayor*," but by what authority that name was originally adopted does not appear. He no doubt was the *portreeve* or *bailiff* of the place, and, according to the practice of the common law, was *sworn* in at the *court leet* of the borough.

It has been stated, that, after Queen Elizabeth had summoned it to Parliament, James I. granted the borough a charter of incorporation; giving it a mayor, with the other usual corporate officers:—but we have not been enabled to discover any trace of the enrolment of such a charter at the Rolls Chapel.

1689. In the second year of William and Mary, there was a petition, by Thomas Jarvis and Oliver Cromwell, Esqs.

And in the two succeeding years, other petitions; and a report upon them; from which it appears, that the question was, whether the right of election was in the mayor and burgesses—or in the mayor, burgesses, and *commonalty*?

Petitioners For the petitioners, who relied on the latter, the return of
1583. the 27th of Elizabeth, was given in evidence; by which the election was stated to have been by the mayor, some bur-

gesses named, and *others of the community*. And similar returns in the 28th, 30th, 39th, and 43rd of Elizabeth were read.

Elizabeth.

1689.

Sitting members.

1603.
Returns.

1625.

1627.

For the sitting members, who relied on the votes of the *select body*, there were offered in proof returns of the first of James, by the mayor and burgesses, naming 12, and under their seals—of the 21st of James, by the mayor and eight named, and *other burgesses*, under their seals—of the first of Charles I., by the mayor and burgesses generally, under their seals. And in the same year, another by the same persons, under the common seal of the borough. In the third and fifteenth of Charles I., by the mayor and burgesses, under their seals. And in the 16th of Charles I., by the mayor and burgesses, under the common seal of the borough.

Parol evidence was given of the *usage* for 16 or 17 years, for the mayor and burgesses to elect; and not the commonalty. And it was alleged for the sitting members, that, in the reign of James II., a quo warranto was brought against the corporation—to which the mayor and burgesses pleaded, that they were a corporation by prescription; and thereupon the king's counsel did not proceed any further.*

Usage.

Whereupon the committee resolved, that this was a corporation by prescription; and that "*the mayor and burgesses only*" had the right to elect. And they accordingly confirmed the seats of the sitting members.

Right.

Thus the returns produced by the *petitioners* having clearly shown, that the first was made by the *commonalty at large*; and those produced by the sitting member only showing, that the election was by the *burgesses*—(which, in truth, was no answer in the negative to the right being in the commonalty) upon a *usage* only of 16 or 17 years, which did not go back so far as the Restoration, (that period of violent measures with respect to municipal rights:) and upon the mere uncontradicted allegation of the burgesses, that they were a corporation by prescription, the committee, contrary to those

* It was from allegations of this description introduced into the pleadings, and not controverted by the opposing parties, who were often interested in the admission, (and sometimes the whole proceedings were by collusion,) that the doctrine of corporations by prescription was, in a great measure, inferentially assumed.

Elizabeth. numerous facts by which we have before shown,* that there were, in truth, *no corporations by prescription*, decided that this was so. And further, drew from that fact the inference, which by no means followed, that the select burgesses had the right of election. Because, even if the place had been immemorially incorporated, it was by no means a necessary result, that the select body should have that right.

1695. In the eighth year of William III., there is another
 Petitioners petition and report; the petitioners insisting that it *was a borough by prescription*—and that the right of election was in the mayor, burgesses, and *commonalty, paying scot and lot*.

Sitting members. On the other hand, the sitting members contended it was a *corporation* by prescription; and that the right of election was in the mayor and burgesses only.

The returns which were read in evidence on the former occasion, were repeated on this. And we should observe,
 Common seal. how little reliance is to be placed on the use of the common seal—as it appeared to be adopted only on two occasions, out of the numerous returns which were produced on the one side and the other. And returns under the seals of the parties themselves, preceded and succeeded both of those instances.

Select body. To prove that there was a *corporation* by prescription, the sitting members read in evidence two ancient deeds—one, of the seventh of Edward III., being a grant “to the burgesses and their successors”—and the other, of the 10th of Henry IV. of a grant by the portreeve of Lyminster and the burgesses, under the common seal.

Successors. We have already abundantly shown, that the term “successors” was no proof of a corporation; nor the use of a common seal.†

But still the committee expressly decided, in language stronger than any we have found before, that the right was *not in the mayor, burgesses, and commonalty paying scot and lot*; but in the mayor and burgesses. And confirmed the seats of the sitting members.

1710. In the ninth year of Queen Anne, another report stated the

* Vide ante, p. 486, et passim.

† Vide ante, pp. 443—495.

question to be, whether the right was in the mayor, bur- Elizabeth.
gesses, and *commonalty*—or in the mayor and burgesses ? 1710.
The populace having polled themselves out of the hall.

The petitioners relying upon their votes, gave the same Petitioners
returns in the reign of Queen Elizabeth in evidence, and
also the resolution as to Boston, in the 4th of Charles I., by Boston.
which it was agreed, “ *that the election of burgesses in all*
“ *boroughs did of common right belong to the commoners, and*
“ *that nothing could take it from them but a prescription, and*
“ *constant usage beyond all memory.*”*

Edwards said, he had been a burgess 15 years, and had Evidence.
known the borough above 35; that about the time of the
convention he was a *scot and lot* man, and that several of
the burgesses sent to him, and told him he had a right to
vote, and asked him, why he did not try the right? That
at two elections the votes of the populace were asked by
the candidates, who stood by the populace. That those elec-
tions were contested: the *votes* of the populace were then
rejected by this House: and the persons chosen by the *select*
number sat in Parliament, and since that the populace had
not voted.

Sir Robert Smith said, when he was mayor of this borough
(above 20 years ago) *he refused to make honorary burgesses* :
and his deputy, David Edwards, aged above 80, commended
him for it: for he said it had never been well with the town
since the *inhabitants* had lost their right of voting.

Inhabitants

That Edwards meant it would never be well with the
town till that right was restored, but did not say he ever
knew they had such right. That the *inhabitants* thought
they had right, and that the honorary burgesses took it from
them.

Hackman said, there are about *seventy* burgesses, of
which *fifteen or sixteen* are *inhabitants*, and there are near
one hundred other housekeepers, inhabitants, who are not bur-
gesses, but generally in as good condition as the burgesses,

* This resolution, in fact, gave the right absolutely to the “ *commoners*”—for the
qualification as to *prescription* and *immemorial usage*, has no foundation:—inasmuch
as it is now clear, beyond all controversy, that the House of Commons itself did not
exist before the time of legal memory.

Elizabeth. and all pay to *church and poor*, except about four of them.

1710. That at the last election the constables refused the petitioners admittance into the town-hall; and it is usual to shut out all candidates and others who are not burgesses.

Sitting members.

For the sitting members the same returns in the reigns of James I. and Charles I., were given in evidence. But some of them appear to support the right of the commonalty, for in two of them the power is given to the members "*ab ipsa communitate*." They also read in evidence the resolutions of 1691 and 1695. Upon which the committee decided,

Right. that the right of election was "*not in the mayor, burgesses, and inhabitants* not receiving alms, *but in the mayor and burgesses only*." But they confirmed the seats of the sitting members.

10.—WHITCHURCH.

Another of the boroughs which returned in the 27th of Elizabeth is *Whitchurch*, in the same county. It is not mentioned in Domesday. It is said to be a borough by prescription, which may reasonably be doubted: and it certainly never has been incorporated. Its presiding officer is called a "mayor," but in all probability is properly only the "port-reeve," or bailiff of the borough, as he is, according to the common law, sworn, like the mayor of Lymington, at the court leet of the manor.

This place never returned members to Parliament until the 1579. 22d of Elizabeth, and there is no report respecting its burgesses, or the right of election, till the first year of the 1702. reign of Queen Anne: upwards of 120 years afterwards.

Right agreed.

When it was handed over to all the intricacies and *unconstitutional* consequences of the *burgage tenure* right of election, by its being agreed, "that the right was in the *burgage tenants*—those who had a *burgage house*, or one acre "of *burgage land*, either in their own right, or in right of "their wives."

1708. And in 1708, the right was determined in substance in the same manner, but in the following words; viz. "that it was "*only* in the freeholders of lands, or ancient dwelling-houses

“ or shambles, or dwelling-houses or shambles built upon Elizabeth.
 “ ancient foundations within the borough.”

11.—SUDBURY.

Sudbury, in the county of Suffolk, is another place that was summoned to return members to Parliament in this reign.

We have already seen that its burgesses are mentioned in Domesday.* And Richard de Clare, about the year 1250, granted certain pasture lands called Portman's Cross, to the *burgesses* and *commonalty* of Sudbury.† It was not incorporated until the first year of Queen Mary,‡ whose charter was confirmed by Queen Elizabeth in the second year of her reign. Charles II. also granted a charter to this place;—and the borough is governed by six aldermen, 24 capital burgesses, recorder, town clerk, &c. 1559.

Before those grants, there is no doubt it was a *borough* under the common law : having its jurisdiction administered in the *court leet*.

From 1640 to 1763,§ several petitions were presented relative to the elections for this place. One by the free burgesses—and another by the freemen,—although, in 1703 the right of election was agreed to be in the freemen. Some being objected to as not being so, and a question arising as to their admission, the committee resolved,—“ That they “ had a right to vote *without any admission in form to their “ freedom, on taking the oath of freemen.*”

This agreement and resolution are in part correct; and partly erroneous.

The agreement was incorrect in giving the right to all the freemen,—whereas it should have been confined to such as were *householders, paying scot and lot*, and who had been *sworn* and *enrolled* as burgesses at the *court leet*.

The resolution properly determines, in conformity with the common law, that the rights of sons of freemen born after their fathers were free, and also that those who had served apprenticeships, were the same; upon the principles we have

* Vide ante, p. 281. † 1 Barn. & Cr. p. 390. ‡ Vide ante, p. 1181.

§ See Sir Thomas Jones, 229, in *Berrington v. Brookes*.

ore explained. But it was an extravagant determination, and in defiance of the common law, and the general practice of the kingdom; as well as in complete derogation of the *leet*;—(which court was holden in this borough,)—that they could be burgesses entitled to vote, without being *duly admitted and sworn*. And it is worthy of observation, that no evidence, nor any principle of the law or constitution, is stated or suggested upon which this anomalous doctrine could be supported.

Nor does there seem to be any mode of explaining it, excepting that an order had been made that “none should vote unless their names were enrolled,”—which was both legal and reasonable,—as by that means, the mayor and all other officers of the borough might, for all purposes, as well of right as burden—and with reference to the enjoyment of all privileges—and the performance of all duties—know who were the burgesses entitled or subjected to the one or the other. And as far as parliamentary elections were concerned, it was material that both the electors and the elected should know who the burgesses were.

But it seems that either by some harsh conduct on the part of the mayor and others, or some obstinacy on the part of the burgesses; there were some persons who, on the ground of this order, had been prevented from voting, having been 20 or 30 years burgesses, and had often before voted.

Incensed by these circumstances, and desirous of providing a remedy for so great an apparent mischief, it seems that the committee, instead of contenting themselves with the obvious course of giving effect to the votes of those so rejected, went further than was either necessary or legal, and came to the extraordinary resolution we have before mentioned.

It seems probable that the committee were also strongly moved by the conduct of the mayor: as he was subsequently committed to the custody of the serjeant-at-arms. And the sitting member was unseated, and the election declared void.

In the next year, another report occurred, from which it ^{Elizabeth.} appears that the petitioners introduced a new mode of ^{1703.} election, conformable to the usurpations prevalent at that time.

They contended, that the right was "*only* in the sons of ^{Petitioners} freemen born after their fathers were free,—in apprentices "*who had served seven years,—and in those who were made " free by redemption."*

For the sitting members it was insisted, that besides these, ^{Sitting members.} those who had served as clerks to attornies, by virtue of such service were free, and had a right to vote.

If involved in the intricacies and obscurities of the modern doctrine as to corporations in connexion with trade, this might have been a question of some difficulty: but considered with reference to the doctrine of apprenticeship, as connected with the principles of the common law applicable to *villainage* and *freedom*, it admits of an easy solution: For—a clerk who had entered into *articles* with his employer, and had *resided* in the town for more than *a year and a day*, *serving* his master under that contract, was clearly free by the principles of the common law; as explained in Glanville, and the other early text-writers.*

Parol evidence for 40 years was given, that such persons ^{Evidence.} had voted, and were never refused; which was only answered by proof that one person who had served as an attorney, had purchased his freedom. But he acknowledged his master had died before his time was out; and he owned that attornies had voted at former elections, and had never been refused.

Nevertheless the committee resolved, "that the right was ^{Right.} "*only* in the sons of freemen, born after their fathers were "free—in apprentices who had served seven years—and" (adopting the usurpation which was asserted by the petitioners, and not denied by the sitting members,) "*in such as " were made free by redemption."*

In the course of the scrutiny of the votes, all the inconveniences of non-resident freemen were exhibited, as some of

* Vide ante, pp. 235—698—722 to 727—762 to 765—1100.

Elizabeth. them came from other boroughs—as Ipswich—and Colchester.*

Loss of
time.

And the mischief of allowing the poorer freemen to vote was established, by showing that some of them had been paid for the *loss of time*—saying, they would have remained at home had not their charges been paid to them—affording so easy and plausible an opportunity for bribery.

The sitting member was unseated, and the petitioner seated.

1774. Other petitions subsequently occurred; but they contain nothing material till the year 1774—when a case arose, in which the rights of this place were much investigated. Many voters had been rejected, on the ground that they did not produce *admissions* to their freedom, *enrolled upon stamps*, from the books of the corporation.

The strange resolution, to which we have adverted, in 1703, in which it was held, that “no admission or swearing was necessary, was referred to.” And it was justly observed in argument, that the right of election for this borough was, during the last century, in a very precarious and uncertain state. That sometimes the exclusive right was claimed and exercised by the magistrates, or governing part of the corporation—and on other occasions, the freemen at large were admitted to vote. That, in short, every election was a struggle, with various success, between the former, who were called the *bench*—and the latter, called the *floor*.

The reader will remember the interpolations which have been mentioned in the books of Colchester, Queenborough, Winchester, &c.,† for the purpose of securing the ascendancy of the magistrates, or select body, under the appellation of the “*bench*.”

It was also contended, on the one side, that the resolution of 1703, was merely an explanation of the former, as to the number of years necessary for the apprentice to serve.

But, on the other hand, it was insisted, that it was a com-

* See afterwards amongst the Cox MSS., Lord Winchelsea’s letter to Mr. Southwell respecting the Maidstone election.

† Vide ante, 748—795—906, &c.

plete independent determination ; for there was no reference to the former—and it declares a right of voting in a class of persons not before mentioned there. And it was urged, that the voters ought to show themselves completely freemen—which could not be without admission, of which the only legal evidence was the enrolment of stamps upon the books of the corporation.

Elizabeth.

1775.

The committee directed, that evidence should be given to show by what right the rejected voters claimed to vote.

Many *honorary freemen*, who had polled for the sitting members, were objected to ; and, as they were unseated, it may be inferred, that the committee rejected those votes.

Honorary
freemen.

During the investigation of this case, it was truly said, that Sudbury was a *borough* by prescription, incorporated by Queen Mary, and began to send members to Parliament in this reign.

That the corporation consisted of a mayor, six aldermen, 24 capital burgesses, and an indefinite number of "*freemen*," as they were called : but who (for the reasons we have before abundantly given, as well as from the express words of the charter) ought to be called "*burgesses*."

That till the year 1772, there were not above five or six instances to be found, in the books of the corporation, of persons admitted to their freedom without a title, acquired either by birth, servitude, or redemption. And those instances were (as we have pointed out in other places,*) of candidates, or members, who were admitted out of compliment, but who never exercised any franchise as members of the corporation. And they were all within the last 100 years.

1772.

It appeared that in 1772, the year above alluded to, the governing part of the corporation (the majority of them being in the interest of one of the candidates) took the bold step of making an entry in their books, asserting their claim to the right of admitting those who had title to their freedom—and *also gratuitously or by favour, without any previous title or consideration in money*. A right which if they really possessed, and it extended to non-residents, would have

* Vide ante, 613, 688, 1134.

Elizabeth. given them the power of entirely overwhelming the votes
 1775. of the real inhabitants; and, if they had thought fit, of giving the right of voting to the *largest portion of the population in the kingdom.*

That this is contrary to law, it is merely sufficient to assert; for it is palpably contrary to reason. "And what is "contrary to reason, cannot" (according to the emphatic words of Chief Justice Willes,) "be consonant to law, which "is founded on reason."*

From that which is contrary to law and reason, no good fruits could be expected; and accordingly it is stated, that the next day, 170 *persons were admitted at once, of whom 150 had no right, either by birth, servitude, or redemption.*

New
freemen.

Before that period the power of the governing body to make new freemen had never been exercised in this borough, nor was it known to exist.

Stamps. As to the non-enrolment upon stamps, it was stated, that the constant usage had been to permit persons having a title by birth to exercise without it, and even without an entry of their admission in the books of the corporation, all the rights of freemen—as turning their cattle on the common—carrying on different trades in the borough—and voting for members of Parliament.

It further appeared in the course of the evidence, *that fraudulent* attempts had been made by the mayor and magistrates to exclude many *sons* of freemen, upon the alleged ground of the want of enrolment upon a stamp—although a usage to the contrary was shown to have long prevailed. This produced considerable dissatisfaction amongst the claimants, and the people in general; which led to a compromise: upon which it was proposed, that a select committee of the magistrates should be appointed to inquire into their titles—a course which the reader will perceive would have been altogether unnecessary, if the legal and constitutional mode of submitting that inquiry to the *jury* at the *court leet* had been resorted to, which would, in fact, have produced the same results.

Sons.

Jury.

Leet.

* Willes, 204; Bell v. Wardell.

The proposal was at first rejected ; but such a committee was afterwards appointed. They, however, were all in favour of one candidate ; and the persons who supported him, were admitted without any inquiry. Many of the magistrates proposed and carried entire lists of their partisans, and were heard to say, " **THEY WOULD ENROL NONE BUT THE FRIENDS OF THEIR FAVOURITE CANDIDATE.**"

Elizabeth.

1775.

Admissions

It was also shown much management had been used with respect to a sham mandamus : upon which the same attorney had conducted the proceedings for both sides, and there was a purposed omission in the evidence.

Mandamus.

It was also proved, that before the election a garbled clause, out of the Durham Act,* had been printed and circulated in the town by the "*mayor, for the purpose of deterring the freemen from voting.*" And many of them going to the mayor to ask his opinion, whether they might vote without incurring the penalties of the Act, received an answer, that they certainly would be liable if they presumed to vote ; and if not able to pay must go to gaol. In consequence of which several were deterred from giving their suffrages : and those who polled were considerably reduced below the number upon former elections.

Durham Act.

These facts were not contradicted by proof, but most of them admitted by the sitting members : and in the sequel they lost their seats ; the mayor being also most severely reprimanded by the chairman of the committee.

Upon a case which occurred in the court of King's Bench, which turned much upon a usage that had prevailed in a particular place, Lord Mansfield † said, he could not suppose, that during the " prevalence of that usage one half of the city were fools, and the other knaves." But after reading the facts connected with the cases of Sudbury, and other places to which we have before referred, the reader will probably think, that whether the learned judge was accurate in the proportions he suggested or not, one or other of the terms he adopted would apply to the greater part of the electors.

Usage.

* 3rd Geo. III. c. 15.

† Cocksedge v. Fanshaw, 1 Doug. 119.

Elizabeth. *Haslemere* is another place which was first summoned to
Haslemere send members to Parliament, in the 27th year of the reign
of Queen Elizabeth.

It is not mentioned as a borough in Domesday.

- In the reign of Henry II. it belonged to the see of Salisbury: and the bishop, in the sixteenth year of Richard II.,
1393. granted it a fair and market. After Queen Elizabeth had summoned its members to Parliament, she re-granted these
1595. privileges, in the 38th year of her reign; and in the charter it was stated, contrary to the actual fact, "that the burgesses
of *Haslemere* had, from time immemorial, at their own
costs, sent two members to Parliament."

There does not appear to be any sufficient reason for supposing, that this place was a borough by prescription. The only fact indicating any considerable antiquity being, that
Court leet. all the municipal officers were elected at the *court leet*.

It has never been incorporated. And its parliamentary history consists of little more than an enumeration of the steps by which a right of election, embodying all the mischiefs of a *burgage tenure* right, was established.

1661. On the Restoration, the merits of a petition came before a
Right. committee, which reported, that the *right* of election was in
"the inhabitant freeholders *only*." In which the House agreed; notwithstanding there seems no ground for such a determination: more particularly as it does not appear to have been an ancient borough: and therefore less within the reasoning upon which the freehold right of voting has been generally supposed to have been capable of being supported.

It was proved in the course of this investigation, that the bailiff had said, "that if the sitting members had but five voices he would return them; and that it lay in his little pate to return whom he pleased;" for which he was ordered into the custody of the serjeant-at-arms.

1680. In the 32nd of Charles II., the election for *Haslemere* again came before a committee: when it appears from the report, that the bailiff had made one return, and three weeks after made another, at the suggestion of one of the members who was returned on the second indenture, for which the

bailiff was a second time ordered into the custody of the Elisabeth.
serjeant-at-arms.

In the next year, an action was brought by Denzil Onslow, 1681.
Esq., who had been omitted in the second indenture, for
making that false return.

In the course of the trial, the chief justice who presided,
for the first time adopted the doctrine, that a *statute* could
become *obsolete*; for referring to the act of the 6 Henry V., 6 Hen. V.
chap. 1, which requires that "the members should be *free*,
"*resiant*, and *dwelling* within the borough;" he ruled, that
"little or no regard was to be had to that ancient statute, for
"as much as the common practice of the kingdom had been
"ever since to the contrary,"—(rather a strong observation,
which, if it were examined, would lack evidence to confirm
it.) And he added, "it was the way to fill the Parliament
"House with men below the employment." The objection to
Mr. Onslow's right to recover on that ground was disallowed,
as it would seem, on no just legal principle, but probably
from a feeling, that the returning officer ought not to have
sheltered himself under such an objection.

It is stated in the report of this case,* that it was *agreed*
by the parties and the counsel of both sides, that the *right* of Right.
voting was in the *burgage freeholders, resiant and inhabitant*
within the borough, and none others. Another instance in
which the agreement of parties (both probably interested in
supporting the right of election, upon which they mutually
agreed in order to exclude others) sanctioned a right which
could not be supported by the general law.

As to some of the voters, an objection was made, that their Fraud.
conveyances had been recently executed, and fraudulently
contrived, to make votes for the election. The court ordered
them to be produced, and it appeared that some of them
were made after the teste of the writ; and some of them in
order to carry a former election.

Two were conveyances of part of a garden, by a father to
his two sons, each containing about ten rods; worth, at best,
2*s.* per annum. Another was by a father to his son, of a

* Lord Somers' Tracts, vol. viii. p. 272.

Elizabeth. quarter of an acre, in a close, which always after lay undi-
 1681. vided, and was constantly enjoyed by the father. Another,
 by a son-in-law to his father-in-law, of a cart-house. In
 another case, a collateral security was given to reconvey, and
 the grantor had repaired it. There appeared also several
 badges of fraud—as continued possession of the grantors,&c.
 —and confessions that the object of making them was for
 the elections.

*“ The matter appearing so foul, the court began severely to
 “ censure such proceedings as evil and unlawful; Mr. W.
 “ (recorder of G——) one of the defendant’s counsel, stood
 “ up to justify those proceedings, and said, that it was part of
 “ the constitution of our government to do so. At which the
 “ court seemed very angry, and wondered that any one, espe-
 “ cially a man of the gown, should say so; and said, ‘ Do you
 “ think our government has no better constitution?’ With
 “ which the gentleman not being satisfied, he was told by the
 “ court, he deserved being taken notice of for saying so. And
 “ Mr. Gresham endeavoured to say something by way of ex-
 “ cuse, but was told by the court it was too bad to be excused,
 “ and it was well an act of Parliament of general pardon had
 “ passed since this was done, otherwise he should have answered
 “ it in another place.”*

The court declared the case was one of great weight, as
 great as any that ever came there to be tried, and that it de-
 served more than ordinary consideration, for *“ the making
 “ votes by such means was a very evil and unlawful thing, and
 “ tended to the destruction of the government and the debauch-
 “ ing of Parliament; and that it was senseless to think such
 “ practices were part of the constitution; and that they deserved
 “ to be severely punished.”* And the court directed a prose-
 cution against one of the principal agents.

Again, in the same book, the making votes by splitting
 burgage tenures, is reprobated. And all conveyances not
 real, and not made *bonâ fide*, upon consideration, were
 held to be void by common law. But the reason of this
 case will extend to other ways of election; “ for where
 Corpora- “ the choice is by the body corporate, the putting out
 tion.

“ without just cause such as are incorporate ; or the making Elizabeth.
“ other members of the corporation to serve a turn at an 1681.
“ election, will be equally dangerous, and also ineffectual.
“ For as those that are so put in gain hereby no right to
“ elect: so those that are so put out lose no privilege of
“ voting; and the officers and persons doing the same, are
“ severely punishable.

“ So likewise, in case of election by *inhabitaney*; the Inhabitants
“ coming to live in a place for a small time upon some par-
“ ticular occasion; or coming to or taking a house, to serve
“ an election, doth not give right to vote: according to the
“ rules of common law and the reason of the case.”

In the 10th Will. III., upon another report, it appears 1698.
that the *right* of election was again *agreed* to be in “ the free- Right.
holders *resident* within the borough. And notwithstanding
the observations we have before quoted of the chief justice,
—and that evidence was given of fraudulent splitting of tene-
ments, and possession taken the day the writ was proclaimed,
and other fraudulent practices:—yet, strange to say, the
petition founded upon them was declared to be frivolous
and vexatious.

In the 28th of George II., a resolution explanatory of that 1755.
of 1661 was made, by which it was declared, that, by the word
“ freeholders,” was meant *only* freeholders of messuages, Free-
holders.
lands or tenements lying within the borough and manor of
Haslemere; whether the same pay rent to the lord of the
borough and manor or not; exclusive of any lands and tene-
ments which are or have been parcel of the waste ground of
the borough and manor; or any messuages or buildings
standing thereon.

This resolution affords another instance of the intricacy in
which questions depending upon these rights were by de-
grees involved; and as it had been before agreed, that the
freeholders had the right of voting, it is difficult to explain
upon what principle the waste ground and the buildings
upon it could be excluded.

In the 15th George III., a petition was presented* against 1775.

* Douglas, 319.

Elizabeth. the return of the two sitting members, which untruly stated that it was a borough by prescription; and complained of the practice of late years of *splitting* and dividing freeholds, and that it had prevailed to such a degree, that if not effectually prevented for the future, the privileges and franchises of the place would be destroyed, and the constitution of the borough totally subverted.

1775.

This petition led to a tedious inquiry of the many instances in which votes had been split, and to long arguments upon that and other subjects, particularly the bounds of the borough; but eventually it was determined that the sitting members were duly elected.

1812.

In a book of questionable authority,* it is stated, that, in the 52nd George III., an opposition occurred, when it was found that no proper conveyances had been made to the voters, and on the day of election, there was not a single voter to be found in the borough.

Creation
of voters.

In this dilemma there was only one course that could be adopted, which was, to cause the bailiff to adjourn the poll to the next day, and in the mean time to put all the attornies who could be procured from the neighbouring towns in a state of requisition, to make out as many conveyances as could be prepared by the next morning.

This was accordingly put in practice, and by nine o'clock on the following day, about a dozen or fourteen parchment votes were created for the occasion.

These were all objected to, as sham conveyances of tenements for which the pretended freeholders were all paying rents to the landlord at the time; but all of them were admitted as good votes by the returning officer.

At the same time, seven persons, claiming to be freeholders and *resident inhabitants* within the borough, tendered their votes for the opposing candidates; but were all rejected by the returning officer.

This conduct produced a petition, which was brought to a hearing the first session of the next Parliament, when the Evidence. landlord was called to prove, that he was possessed of all

* Oldfield's History of Boroughs.

the freeholds for which the person polled for the sitting ^{Elizabeth.} members had voted. ^{1812.}

The examination of this witness was objected to, on the ground of his being an agent for the landlord.

On the opposite side it was contended, that if he had been ^{Evidence.} an agent for the sitting members, it might be objected to his examination; but his being agent for a peer of the realm, who had no right to interfere in the election of members of Parliament, had no such effect. His examination was not admitted.

The rent collector was then called to prove, that he received rent of all the pretended freeholders for the premises they occupied, and for which they voted at the last election.

His evidence was refused, for the same reason as the former.

The occupiers of the pretended freeholds were at last called to prove, that they paid rent to the landlord for the same; and that *they only received the conveyances of the freeholds on the morning of the election, and returned them as soon as they had voted.* ^{Voters.}

The committee resolved, that these men could not be examined to disqualify their own votes.

The petitioners having no other means of proving their case, the sitting members were declared duly elected.

Thus in a place only summoned for the first time to return members by Queen Elizabeth, a right of election contrary to the ancient law, and the ancient practices of the constitution, was adopted, which led to consequences severely censured, in cogent language, by one of the judges of the land—yet persevered in—partly sanctioned by Parliament—and finally producing the greatest abuses and unconstitutional practices.

The last place to which we shall refer, as being especially summoned to send members to Parliament in this reign, is ^{Richmond.} *Richmond*, in Yorkshire.* It had a castle in the time of William I.; but it is not mentioned in Domesday as a ^{Domesday.} borough.—However it very early acquired that character, as

* See Sir H. Ellis, Domesday, vol. i. p. 222.

Elizabeth. a charter was granted to the "*burgesses*," by John, eldest son of the Duke of Britain, giving to them the borough and the rents of assise. It was confirmed by Edward III., in the second year of his reign.* In pursuance of which, Richmond was properly summoned by the sheriff, as being a borough, to return members to Parliament; but it made none, as the sheriff states, that "the names of the *burgesses* were not sent to him."† Nor did it ever send members to Parliament till this reign—in the 19th year of which, Queen Elizabeth *incorporated* it—and in the 27th year, summoned it to return members to Parliament. A further charter was granted in the 20th year of Charles II.

1576.
Incorporated.
1584.
Summoned

1667.

Court
leet.

1713.

1764.

No records afford any distinct information as to the *burgesses* of this place, excepting that it has a *court leet*; but it has shared the same fate as that of Haslemere, by having the right of election confined to the *burgage-holders*—which was assumed to be the right in the 13th of Queen Anne; and again in the fourth year of George III.

As might be expected, this place has also exhibited abundant instances of splitting houses and lands, and multiplying votes; as we have before seen in the case of Haslemere.

We have thus stated the history of the places which were first summoned to Parliament in the reign of Queen Elizabeth; for the purpose of showing who were treated as the *burgesses*. And the reader will have seen how various have been the qualifications by which they were defined. As they were summoned for the unconstitutional purpose of procuring an influence in the House of Commons, so they appear to have subsequently produced the most irregular and unconstitutional *usages*. Nor should it be overlooked, that notwithstanding these boroughs were of modern creation, the right of election adopted, with respect to many of them, was that of *burgage tenure*, which is usually asserted to be the most ancient right of voting.

Usages.

Burgage
tenure.

Maidstone—Yarmouth, in the Isle of Wight—and Aldborough, in Yorkshire—were *restored* to the right of re-

* Pat. 1, Edw. III., p. 4, n. 11.

† 4 Pryne, 1094.

turning members to Parliament; but after the full manner ^{Elizabeth.} in which we have canvassed the history of the preceding places, it is here needless to further investigate their condition.

We proceed to add such other documents as may be material for insertion in this reign.

HELSTON.

The queen, in the 27th year of her reign, granted a charter to *Helston*, reciting, as in the former charters we have quoted, that the burgesses and *inhabitants* had enjoyed divers liberties by prescription and charters.* That they had besought her to incorporate them into a body corporate—which the queen accordingly did, by the name of “the mayor and *commonalty* of the borough of Helleston.” 1585.

The first mayor and aldermen are named, and described as honest *men* and *inhabitants*.

There is then introduced, for the first time, the clause, ^{Power to admit freemen.} which afterwards became frequent, allowing the mayor and *commonalty* of the borough of Helleston, and their successors, with the aldermen, or the major part of the aldermen, to *elect* and admit such and so many of the more discreet, honest, and quiet men and *inhabitants* of the borough, to be the burgesses and *freemen* of the same borough, as to them should, from time to time, seem fit and convenient.

And the mayor, commonalty, and their successors, are empowered to nominate two burgesses for the Parliament.

As to this power of admitting freemen, it should be observed, that as far as the admission and swearing of bur- ^{Admission of free-men.} gesses is concerned, it was only declaratory of the common law; and would have the effect of protecting the mayor and commonalty from any claim by any *lords*, in consequence of persons being admitted as freemen whom they might claim as their *villains*: and would also be a protection against any similar claim by the crown. But as to the “*election*” of freemen, we have already seen, in the case of Queenborough, that a committee negatived that right in the

* 5 Bro. Par. Ca. 512, in *Hoblyn v. The King*.

Elizabeth. select body of the corporation ; and, in truth, it is obviously an absurdity to speak of "*electing*" *freemen*, as they could only be admitted in consequence of the fact of their being of *free condition*, to which they could not be said to be "*elected*." Nevertheless these clauses were introduced, like the interpolations, and adoption of the term "*elected*," in the cases of Colchester, Queenborough, East and West Looe, and other boroughs—for the purpose of making it apparently a matter of arbitrary *election*, rather than, as anciently, a subject for legal *presentment*. And as the elections were, in most instances, assumed to be by the select body, they gave a semblance of legal authority to that system of usurpation, which afterwards introduced those evils so much complained of in corporations—and the source of that distrust and odium which has been directed against them.

The *arbitrary and exclusive practice of electing freemen*, received its final confirmation and legal sanction in the case of the King and Bird, to which we shall hereafter refer.

PORTSMOUTH.

Portsmouth having continued in the same state with respect to its *burgesses*, from the time of *Richard I.** to the close of the reign of Henry III. :†—and confirmations of the former charters having been made in the 6th year of Edward II., 1313; in the 32nd of Edward III., 1359; and in the 8th year of Richard II., 1385. And the returns of members to Parliament in the 27th of Henry VI., 1449; the 29th of Henry VI., 1451; and in the 12th Edward IV., 1473, being made by the "*consent and assent of the whole commonalty*," and amercements having been frequently imposed in the *court leet* of the borough upon tradesmen of the town for exercising their trades, not being freemen;—and the mayor and *commonalty* having joined in the granting of the lands of the borough;—and the mayor and *inhabitants* in the regulation of the commons;—Queen Elizabeth, in the 42nd year of her reign, granted to the borough a

Court leet.

1600.

* See before, p. 372.

† See before, p. 468.

charter of *incorporation*, the material parts of which will be found hereafter.

ELIZABETH.

1600.

The penalties imposed upon persons trading in the town not being freemen, have been to some extent observed upon before:—but it may be material to add here, before we proceed to the consideration of the charter of Queen Elizabeth, that it is hardly possible to conceive, that the *burgesses* could have the power of enforcing these fines upon tradesmen for not being freemen, if such tradesmen had not the power of becoming freemen if they pleased.

Free to trade.

Thus it was decided, that a bye-law of the common council, that none should use dancing who were not free of the company of musicians, was held void, because the party could not compel them to admit him.*

Bye-law.

It has been before shown what the nature of this freedom was, and how it connected itself with the regulations of trade. If a tradesman was of *free condition*, he was entitled to trade any where.

Freedom.

Thus it has been decided, that a right to trade could not be taken away without a consideration:†—otherwise these fines and similar regulations would operate in restraint of trade, and tend to monopoly.

Monopolies.

If a man was *not free*, but was a *villain*, he could not trade at all in any place, for the reasons which have been given before. Unless, therefore, he had ceased to be a *villain*, by *living a year and a day* in the town, away from his lord; he had no right to trade; but if he had lived such a time in the place, to the knowledge of the other inhabitants, then, upon the one hand, he was *compellable* to attend the *court leet*, and be duly *enrolled*, *sworn*, and *admitted* as a freeman; and upon the other, if he *applied* for such admission, the mayor and court were *bound* to admit him: and in this point of view, these fines might be legal and reasonable, because they would be imposed upon persons who, as free, ought to have been admitted as freemen; and were guilty of a default in not being so. Nor had they any right, under such cir-

Villains.

Leet.

* 5 Mod. 104.

† Salk. 203, Mayor of Winchester v. Hilkes.

Elizabeth. cumstances, to remain or trade in the place, nothing appearing to show that they were not villains; and they not being contributors in scot and lot with the rest of the burgesses. But upon the other hand, if it was assumed that the mayor or burgesses had the power of fining the party for trading, not being free:—and had at the same time the power of excluding him from being a freeman:—it is obvious that it would be in direct restraint of trade:—and place a monopoly in the hands of the mayor and burgesses:—and would be so unjust and irrational, that it cannot be assumed to have formed any part of the English law.

It may therefore be justly inferred, from the imposition of these fines, that every person who had lived in Portsmouth for more than a year and a day, was *bound and entitled* under *Admission.* the common law to be *sworn, enrolled, and admitted* as a *freeman*:—and that if he was not so, he had no right to remain or trade in the place, and was therefore justly subjected to these fines.

With these recollections of the history of Portsmouth, from the reign of Richard I. to the time of granting this charter, we proceed to consider its contents.

1600.
Charter.

It recites that Portsmouth was an ancient town, having within it, from time immemorial, for the better government and rule of it, one mayor, two bailiffs, two constables, and other public officers out of the *burgesses and inhabitants** of the borough; by whom the borough and inhabitants were governed from time immemorial. And that divers lands and liberties had been granted to the burgesses and inhabitants, sometimes by the name “of the honest *men* of Portsmouth,” and sometimes “the *burgesses* of Portsmouth.”

It further recites, that disputes had arisen from the variety

* The frequent mention of “burgesses and inhabitants” has been before commented upon. Here it is obvious that the addition of the word “inhabitants” might be necessary to meet the circumstance of a person having resided a year and a day in the place; and being fit, in the estimation of the burgesses, to be the mayor, should be elected for that purpose before he had taken upon himself the character of a burgess; and therefore would be properly described as an “inhabitant,” and when elected he would be sworn and enrolled as a burgess, and take the oaths of office at the same time.

or the names and *incorporations*,* and other defects in the letters patent, as well as by force of the prescription and usage of the borough. To remove the same, and that from thenceforth one certain manner might be continually had in the borough of keeping the peace, and for the rule and government of the people, the queen granted, that the borough should be from thenceforth for ever a *free borough* of itself; and that the *inhabitants*† for ever thereafter might and should be a body *corporate* and politic, by the name of “the mayor and burgesses of the borough of Portsmouth.”

1600.

Free
borough.
Corporate.

The usual corporate powers are added, and also the right of having a common seal.

The *court leet*, and view of frankpledge, are confirmed. Court leet.

The first mayor is appointed:—and the mayor and burgesses are enabled yearly to elect one of the senior and principal, better and more honest *burgesses*,‡ to be mayor of the borough; who is to take his oath before his last predecessor, or the burgesses:—who are to fill up any vacancy of mayor by electing another out of the senior and principal, better and more honest *burgesses*.§

Mayor.

The mayor and three burgesses are to be the justices of the peace. The first and modern justices being appointed. Justices.

And it is further directed, that the mayor and burgesses may in every year, among themselves, and out of the senior and principal, better and more honest *burgesses*,|| elect three to be justices of the peace: who are, immediately after their election, to take their corporal oaths before the mayor and burgesses.

And it is provided, that if any justice shall die, or depart

* Queen Elizabeth here applies the term “incorporations” to the previous charters of Portsmouth. But the reader has already seen, and must be satisfied, that they do *not* justify the use of that term. This is only another instance of the loose application of this expression.

† This is an express and explicit incorporation of the *inhabitants* by the name of the burgesses; and were there no other fact or document to establish this point, but this charter alone, it would appear to be the irresistible and indisputable construction of it.

‡ That is “inhabitants.”

§ That is “inhabitants.”

|| That is “inhabitants.”

Elizabeth. from such his office, then the mayor and burgesses, or the
 1600. major part of them, shall elect another, of the senior and principal, better and more honest burgesses of the same.

It is also further granted, that none of the mayor or burgesses, nor any *inhabitant* or *resiant* within the borough, or the liberties thereof, shall be put or impannelled in any assises

Juries. or juries out of the borough.

Confirmation. And there is a general confirmation of all lands, which the burgesses or *inhabitants* of the borough had enjoyed.

Before we quit the charter of Elizabeth, it should be observed, that it contains no provision for the election of Burgesses. It has been shown who they were from the earliest times: and this charter does not purport to alter that Inhabitant class. They were the *inhabitant householders*; and in conformity with that fact, this grant "*incorporates the inhabitants as burgesses.*" It would therefore seem to have required the fullest extent of legal ingenuity, or of hardy assertion, to throw the slightest doubt upon the position, "that the *inhabitants* of Portsmouth were the *burgesses*;" nor could such a doubt have been believed to have existed, had not the decisions of the courts and committees of the House of Commons authorized such a belief.

ANDOVER.

Lengthened as our extracts and documents have been during the reign of Queen Elizabeth, it is impossible to omit some account of the borough of *Andover*—the history of which is peculiar, and in every respect illustrative of our subject; and of the successive encroachments upon the rights of the *inhabitants* of the place.

Andover does not appear to be a borough by prescription—it is not mentioned, as we have seen,* in Domesday—and in the reign of Henry II., there is a grant, not to the burgesses, but to the *men* of Andover, granting them a guild merchant, &c.; which is a strong circumstance, in contradiction of Brady's doctrine, to show that such a grant did not

* See before, p. 109.

were, in like manner, confirmed—and another grant made to the *men* of the town.†

Nor are the *burgesses* of Andover mentioned in any public document, till after the time of legal memory.

They returned members to Parliament in the 24th, 30th, 33rd, and 34th of Edward I.; and the first of Edward II. But in the second and fourth of the latter reign, the bailiffs of Andover made no return to the sheriff of Hampshire. Winchester, Basingstoke, and the Isle of Wight, were similarly deficient.‡ 1310.

Prynne states, that it returned in the 33rd of Edward III., but of that there may be some doubt.

In the ninth of Henry IV., a grant is made to the *good men* and the *commonalty*; and in the ninth of Henry VI., to the *men* of the town.§ And charters of confirmation were granted by Edward IV. and Henry VIII. 1407. 1430.

Andover was restored to representation in Parliament in the 27th of Queen Elizabeth, after having intermitted for nearly 200 years. 1584.

With what view it was restored, and how the privilege it obtained was used, may be collected from the history which we have given of the other boroughs summoned to Parliament in this reign; and the following letter from the Earl of Leicester, high steward of the borough. 1584.

“ After my heartie commendations. Whereas it has pleased her majesty, to appoint a Parliament to be presently called: being steward of your towne, I make bould heartily to pray you that you would give me the *nomination*|| of *one of your burgesses* for the same; and *yf mynding, to avoid the charges of allowance for the other burgesse, you mean to name anie that is not of your towne, if you will bestow the nomination of the other burgesse also on me, I* Nomination of members.

* See before, p. 338.

† See before, p. 410.

‡ 2 Prynne, 295.

§ See Mad. Fir. Bur. 210.

|| Vide post., a similar letter from Lord Orrery in the 12th of Charles II., when he was lord justice of Ireland, to the *inhabitants* of Kinsale.

Elizabeth. " will thank you for it; and will both appoint a sufficient
 1584. " man, and *see you discharged of all charges in that behalfe.*
 " And so praying your speedy answer herein, I thus bid you
 " right heartilie farewell. From the courte, the 13th Oc-
 " tober, 1584.

" Your loving friend, R. Leycester.

" *If you will send me your election with a blank, I will put
 " in the names.*

" To my very loving friends, the bailiffs and the *rest of the*
 " *towne of Andover.*"

1599.
 Charter.
 Incorpora-
 tion.

In the 42nd year of this reign, a charter was granted by the queen to the *men and inhabitants*, incorporating them, by the name of the "bailiff, good *men*, and burgesses of the borough." Since which time, the town has been governed by a bailiff, a steward, two justices, nine other *good men*, 12 capital burgesses, and other subordinate officers.

Prescrip-
 tion.

This charter has a recital of the previous enjoyment of certain rights "*by prescription*," upon which we have before commented.

Men and
 Inhabi-
 tants.

It also confirms the view already taken of many of the charters of this reign; for it speaks of the *men AND inhabitants* having had immemorially, for the better governing of the town, certain officers, by whom the borough or town, and the *men AND inhabitants*, have been governed:—It then recites the former grants:—And it seems impossible to read it, without being satisfied that the *approved men*, the *inhabitants*, and the *burgesses*, were, in fact, all the same class.

It is granted on the petition of the *men and inhabitants*. It makes the borough or town a free borough—and the burgesses *and inhabitants* a body politic, by the name of "*the bayliffe, approved men, and burgesses.*"

The officers are to be selected from the better and more *Inhabitants* approved of the *inhabitants*.

Ten of the better, more discreet, and approved *burgesses and inhabitants*, are to be the "approved men;" and 12 of the *inhabitants* are to be capital burgesses.

The 10 approved men, and the bailiff and steward, are to

be the common council, with power to make bye-laws: and one of the 10 approved men is to be yearly nominated bailiff.

Elizabeth.

1599.

Common
council.

If any of the approved men die, they are to be filled up from the burgesses; and if any of the burgesses (meaning clearly the 12 capital burgesses) should die, or be removed, one of the *inhabitants* should be elected to fill the place.

So that it appears from this charter, that the *approved men—burgesses—and inhabitants*—were all *incorporated*; and the 10 approved men, and the 12 capital burgesses, were, directly or indirectly, to be taken from the *inhabitants*.

Inhabitants

It is therefore clear, that, from this time, some of the *inhabitants* were to be denoted by the name of “the approved men;” and that term, which had before been used in the borough, was then appropriated to that select number.

Approved
men.

This grant probably was obtained, for the purpose of giving to the select bodies created by it, an ascendancy, which might enable them to effect the objects the Earl of Leicester clearly had in view: and which were adopted at that period by the queen, and by many officers of the crown.

Nevertheless, as Andover *had returned members to Parliament before this period*, it could not alter the class of persons who were to vote: and, in fact, it does not attempt to do so—for there is no reference in it respecting the return of members to Parliament.

Parliament.

This charter, therefore, should properly be thrown out of the question, with respect to the elective franchise, which ought to be ascertained by the previous charters and returns—and they fix the right in the “*probi homines*,”—the good men, tenants, or burgesses;—or in other words, the *inhabitant householders*.

Notwithstanding, however, the charter does not give the select body of burgesses the power of election, still, considering the manner in which that power was before exercised, it is not surprising, that all authority should have been exercised in the borough by the select body created by this grant. And accordingly we find, from the proceedings in the Journals, that the elections were, in

Select
body.

Elizabeth. truth, made by the select body of the corporation, as may be
1641. distinctly collected from this report.

In 1641, there was a petition by *Sir W. Waller* against the returns for Andover, as appears by the report.

Sir W. Herbert reported the state of the election :—*There*
3d May
1642. *are in the town 24 burgesses that have right of election.*
Eighteen only appeared ;—and nine were for Mr. Vernon ; and
nine for Sir William Waller. That the bailiff, who challenges a
Casting
voice. *casting voice*, gave his vote for Mr. Vernon, and returned him.

Evidence. That there was one *Mr. Bourne*, who was *elected, but not*
sworn ; and who was there at the door, but could not be
admitted during the time of election : which being over, he
came to the bailiff, and said, that he was there to give his
vote for *Sir William Waller*. The bailiff answered him,
that he had no voice there, having only been *elected* a
burgess, and *not sworn*. There were two other burgesses,
William Bassick, and another, who were at the town-hall
before the election began, but they were all generally put
out, as *not being sworn*. And they came not to give their
voices during the time of the election, as the others did ; but
after the election was ended, then they came and said that
they were come to give their votes for Mr. Vernon.

Determi- And it was resolved, that Mr. Vernon's election was void.
nation.

And the question being proposed, whether Sir William
Waller's election be good ; it was carried in the affirmative, by
a majority of five :—the numbers being for his election, 107—
against it, 102.

This, although an erroneous judgment as far as the right
of the select body was sanctioned by it ; seems to have
been a correct determination, with regard merely to the
members. Because the bailiff was clearly not entitled to a
Casting
voice. casting vote for Mr. Vernon ; and the burgess who had been
Notsworn. *elected, but not sworn*, might have been held, on correct
principles, to have been entitled to vote, if he had *tendered*
himself to be sworn ; for he would have done all in his
power to complete his title : and the want of being sworn,
was not his fault, but that of others. The other two could
not be reckoned, because they had not tendered their votes.

But it must be recollected, that the right of the inhabitants at large was not at all considered on this occasion. It was not the interest of either of the litigant parties to assert it; and, in point of fact, it never was in any manner taken into consideration; but the right of the common council was assumed without question.

Although *Bourne's* vote might have been legally established on the ground we have suggested, that he had been desirous of doing all in his power to complete his title; so on the other hand it might have been allowed on the ground that the *inhabitants* generally had a right to vote, if they had tendered their suffrages—a suggestion which is not altogether without foundation; as in Sir Robert Henby's petition, after the Revolution, it is said to have been proved by witnesses, that Sir William Waller was chosen by the "*populace*."

On the Restoration, in the 13th year of Charles II., several returns were made by the bailiff; two of the *approved men*, and two of the burgesses by name, with many others of the *approved men* and *burgesses*, *inhabitants*, "fit and "capable to elect burgesses to serve in Parliament."

Two returns of the 21st of Charles II., were made by the bailiff, *approved men*, and *burgesses*, *inhabitants* within the town. And one of them—showing how unimportant the use of the common seal was thought—is under the seals of the persons joining in the return.

In the 25th year of Charles II., another was made, much in the same manner; excepting that some words were again added to the description of the voters; that they were "qualified, and capable to elect a member."

In the 30th Charles II., the return of members to Parliament was by 10 *approved men*, and 11 *burgesses* by name, "qualified and capable to elect," being a majority of the persons qualified.

In the 30th, 31st, and 32nd years of Charles II., there were petitions against the return for Andover; but they contain nothing material, and there was no report upon either of them.

There was also a charter granted by Charles II., but it does not appear to have been acted upon, and therefore was

Elizabeth.
1642.
Inhabitants

1689.

1660.

1668.

1672.

1677.

1678.

1679.

1680.

Elizabeth. probably assumed, like many of the same date, to be illegal and void.

Approved men. The terms *approved men*, which occur so often in the documents of Andover, are nothing more than another translation of the "*probi homines*." But whether they were adopted for the purpose or not, they seem calculated to encourage the idea, that "the approved men" were a selected class:—but which inference could never have been drawn from the words "*probi homines*," if they had been continued. However there can be no doubt, taking all the records of Andover together, that the *probi homines*, or *approved men*, were really the tenants, or *inhabitant* householders, of the place.

Common seal. That some of the returns are under a *common seal* does not prove them to be *corporate acts*; or to be done by the corporation: because there are many places having common seals which are not incorporated; and where the returns have been made under the common seal; although the election has been by the body at large of the burgesses or inhabitants.

1688. After the Revolution, two unsuccessful candidates petitioned against the return, on behalf of themselves and the body of the burgesses.

Question. The return was in the same form as the preceding; and in the report the contest is stated to have been, whether the election lay in the bailiff, and a *select number* of burgesses only, or in the *populace*.

Common council. It seems that the *common council* of 24 were erroneously supposed to be the *burgesses*; by a misapprehension of the charter, similar to that which we have before remarked as to Banbury; and upon the same ground; that in the clause for filling up the vacancies of the *capital burgesses*, the term "*capital*" is omitted, and they are only called "*burgesses*;" but the context of the charter abundantly shows, that, in other parts of it, that term was intended to be applied to the body at large.

It seems clear, that the question on this occasion was between the *common council*, and the general body of the *inhabitants*.

The early charters,—their proper explanation—and the in-

ferences to be drawn from them, do not appear to have been submitted to the committee. But the *inhabitants* seem to have insisted upon their right nine years before. And in the Parliament previous to 1689, they had intended to assert it, but the town-clerk threatened to prosecute them for a riot:—a proof of the oppressive violence with which the right of the *inhabitants* was then resisted.

The petitioners insisted that it was an *ancient* borough, (which is true, although it was not a borough by prescription;) and they said, that it had been used to send members to Parliament, who had been chosen by the *populace*.

They produced the returns of the 33rd and 34th of Edward I. But as at that early period they were not made by indenture, but by indorsement on the writ, nothing could be collected from them as to who were the electors.

Two other returns of the 30th and 39th of Elizabeth, by the *commonalty*, were likewise given in evidence:—and they are stated in the report to be with the consent of the “corporation;” but it is highly improbable that such a term should have been then actually used, as the charter of incorporation given by Queen Elizabeth was not then granted.

Witnesses were produced, as we have observed before, to show that Sir William Waller, who, during the commonwealth, was seated on petition, had been chosen by the “*populace*.”

It was likewise alleged, that there was a petition in 1680, upon the right of the *populace*, which was never heard.

For the sitting member, it was insisted, that Andover was a *corporation* by *prescription*; (which we have seen was not true;) and it was stated, that the members had always been chosen by a *select number*, which, in the reign of Edward I., when Andover first returned members to Parliament—and which therefore is the important period to be considered—is, to say the least of it, highly improbable; and was at all events gratuitously asserted on that occasion; for there was no proof of it;—inasmuch as no other evidence was given to that point, but the returns, and they are silent as to the voters.

They also produced an ancient book, in which it appeared,

Elizabeth. that several courts had been held by the maneloquiums; and there was an order made by the steward and 24 "per wardinos" in the 37th Henry VI.

1458.

Some of the terms in this report of the evidence seem to be strangely used; but they are capable of easy explanation.

Maneloquium.

Maneloquium is a term we also find used in the books of *Marlborough*, and was descriptive of the meeting of the inhabitants. The steward and the 24, were the steward of the court *leet* and the *jury* there; and the "wardinos" were probably the wardens of the guild.

Select number.

The recital of the charter of Elizabeth, that Andover was a *corporation by prescription*, was read and relied upon;—several indentures under the common seal were also adduced in proof; and witnesses were called, who said they had known many elections, and all they remembered had been by the *select number*.* Which, no doubt, was correct, because their evidence could not go back beyond the charter of Elizabeth. And considering the Earl of Leicester's letter,—the argument in it—the charter of Elizabeth asserting the immemorial incorporation—and the circumstances which afterwards occurred—there is no doubt that witnesses might be found who could correctly give this proof.

Agreed.

The report then states, that the *petitioners agreed that it was a corporation by prescription*. Which was certainly contrary to the truth; and in effect gave up the whole case. For, if it had not been a corporation by prescription; nor before the charter of Elizabeth: then the select body of corporators could not have been the voters in the reign of Edward I.; and the decision must have been against them. On the contrary, when the prescriptive incorporation was admitted, it let in the evidence of *usage*, which being assumed to be proved in favour of the select body, the committee decided that the right was in "the bailiff and a *select number of burgesses only*."

Usage.

Right.

1700.

The effects of this determination were visible a few years afterwards:—for in 1700, proceedings were taken against Mr. Shepherd for the corrupt elections he had procured for this

* See afterwards, temp. Jas. I.—the Dunganon case, 12 Co.

place amongst others; and the House resolved, that the electors of Andover had corruptly endeavoured to set their election to sale; and the bailiff and others, for having concurred in it, were ordered into custody. Mr. Shepherd was dismissed the House; and the others reprimanded. Elizabeth.

In 1701, there was a petition, by Sir John Cope, asserting the undoubted right of the burgesses, freeholders and *inhabitants*, against the right of the bailiff, and capital burgesses only, who had returned Mr. Shepherd; and it complained also of the disfranchisement of some of the burgesses without any cause. On this petition no evidence being offered by the petitioners, the committee resolved again, in conformity with the resolution of 1689, that the right was in "the bailiff and *select* number of burgesses *only*." 1701.
Right.

Thus was the fullest effect given to the interference which, with this place, commenced in the reign of Queen Elizabeth—to the false recital of the charter—and to the irregular and violent acts which occurred in the reign of Charles II.; upon whose void charter also, some of the usurpations were no doubt founded.

PLYMOUTH.

In the 43rd of Elizabeth, there is a charter to *Plymouth*, reciting, that the queen, observing how that borough was situated near the sea coast, and that by the borough and *inhabitants* thereof, there might be necessary convenience, not only for the preserving and defence of the country near that borough, and the people *inhabiting* there, but also for merchants, foreigners, *natives* and others, who might thereafter come there: directs that the mayor, recorder and last mayor, should be justices; and that the justices of the county should not intronit. 1601.
Justices.

The mayor and 12 capital burgesses, calling to them 24 of the better and more discreet merchants or free *inhabitants*, have authority given to them to make laws, statutes, &c. with power of fining for their breach.

The mayor and commonalty are to nominate and elect such and so many officers and ministers whatsoever, as to them Officers.

Elizabeth. should seem fit for the better government and advantage of the borough, as theretofore had been used and accustomed.

No foreigner, not a freeman of the borough, was to sell any merchandises within it otherwise than in gross; unless only at the time of fairs or markets. And all markets, fairs, liberties, free customs and jurisdictions are granted which the mayor and commonalty, by whatsoever name of incorporation, or upon any pretence of incorporation whatsoever, had theretofore rightfully enjoyed, by reason or pretence of any charters or letters patent, &c.

PLYMPTON.

1602. In the 44th year of Queen Elizabeth, there is a charter to *Plympton*, reciting that it was an ancient borough, of ancient demesne, and (as we have seen in many other charters, without any truth) that the burgesses and *inhabitants* had been *incorporated* from time immemorial; but that doubts had arisen respecting the true name of the incorporation; and that the borough had fallen into decay, in consequence of which the burgesses and *inhabitants* had petitioned the queen to extend her favour to them.

Inhabi-
tants peti-
tion.

Free
borough.

The charter then proceeds to grant that it should for ever be a free borough; the burgesses and *inhabitants* (by whatsoever name or names they had been theretofore incorporated) should be a *body corporate*, by the name of "the mayor, bailiff and burgesses."

Incorpora-
tion.

The principal burgesses are to elect from themselves two persons, one of whom the other *inhabitants* of the borough were to name as mayor.

Mayor.

The bailiff yearly to be nominated by the mayor and chief burgesses from among themselves.

The principal burgesses to be selected from the *burgesses*, by the mayor and principal burgesses.

Fines.

The mayor, bailiffs and burgesses to receive all fines and amercements, &c.—with assise of wine, bread and ale, &c.

One market, two fairs, with a court of pie powder are likewise granted.

The mayor and recorder are to be justices of the peace, and the town clerk coroner.

1602.
Justices.

The mayor, bailiffs and *burgesses* are to choose two discreet men for burgesses to Parliament.

No *foreigner*, not a *burgess*, is to sell any merchandises within the borough; except during fair time.

Jurisdiction is then given over all real and personal actions; and that the mayor, bailiff and burgesses might have a *view of frankpledge* of all burgesses, *inhabitants* and *resiants*, within the precincts of the borough.

Frank-pledge.

A confirmation of all previous liberties concludes the charter.

Some other charters granted in this reign, so nearly resemble each other, and those we have quoted before, that it is not necessary to do more than signify the names of the places—the dates of the grants—and a few heads, to indicate the substance of them.

In the 2nd of Elizabeth, an inspeximus and confirmation of the charters of Henry VIII., Henry IV., Edward III., and Edward I. were granted to Lyme. And in the 33rd year, a charter, reciting that the mayor, burgesses, and *inhabitants* had enjoyed certain rights, and at their request, the queen incorporated them by the name of the mayor and burgesses.

In the 18th, to *Durham*, by Bishop Pilkington, incorporating it.

Durham.
1576.

And another by the queen, in the 44th year of her reign, regulating the elections.

1602.

In the 22nd of Elizabeth, to the English Company of Merchants of Newcastle.

1579.

In the 23rd of Elizabeth, to *Newcastle-upon-Tyne*, giving it admiralty jurisdiction—the court being held before the mayor, recorder, and aldermen, *inhabiting* within the port.

1580.

To *Lisheard*, incorporating the *inhabitants*, by the name of the mayor and burgesses of the borough.* Nine of the better men, of the more honest burgesses of the borough,

Lisheard.
1586.

* Pat. 29 Eliz. p. 13.

Elizabeth. and *inhabitants* within the same, are to be capital burgesses.

From whom the mayor is to be elected yearly, by the men and *inhabitants* being burgesses. The borough mills and lands are granted, which had theretofore been held by "the burgesses,"—or "the inhabitants,"—or "the mayor and burgesses,"—or "the beloved and faithful men of Liskeard,"—or by whatever names—or by whatever denomination of corporation—or by whatever incorporation—or reason of any prescription, writing or writings, by the space of 50 years then last past. And finally, exemption is given from serving upon juries without the borough.

Juries.

NEWCASTLE-UPON-TYNE.

1588. In the 31st of Elizabeth, another charter was granted to *Newcastle-upon-Tyne*, incorporating the burgesses and *inhabitants*, and mentioning the several names by which they had before enjoyed privileges: and which must be assumed therefore to have been synonymous—as, the *good men*—the burgesses—the burgesses and *good men*—the *commonalty*—and the mayor and burgesses, or any of them, by whatever name, or by whatever incorporation, or by pretext of whatever incorporation, had theretofore enjoyed, &c. And jurisdiction over the castle is also granted; and over all persons *commorant*, *inhabitant*, and being there.

First incor-
poration. Although there is a regular series of the charters of Newcastle from the earliest time, this is the first which speaks of the *incorporation* of the burgesses; notwithstanding there was a charter before this date, of the first of Edward VI., incorporating the merchant adventurers.*

1600. There is another charter to Newcastle, in the 42nd year of this reign, which regulates the elections of all the elective officers; and which limits the interference even of the men of the mysteries, to those *commorant* and *inhabitant* within the town; and describes the *hostmen* as also *inhabiting*.

Commo-
rant.

A clause in another part of the charter recites, that Newcastle is an ancient town; and the mayor and burgesses have, and from time immemorial have had, within it a

* Vide ante, p. 1160.

certain guild or fraternity, commonly called the *hostmen*, Elizabeth. 1600.
 for the loading and better disposition of coals: which guild Hostmen.
 or fraternity *was not granted or established by any of the charters or letters patent*. And that the mayor and burgesses had petitioned that the queen would make the fraternity a body corporate. Her majesty accordingly did so—providing amongst other things, that in case of vacancies, the governor, stewards, and brethren, from time to time, should elect and nominate, *at their will, other inhabitants of the town, and burgesses of the town*. to be brethren of the fraternity. Elect brethren.

From this mode of expression, it seems clear, that the preceding qualifications necessary to make a person eligible as a *hostman*, were his being an *inhabitant* and a *burgess*; so that no person *not an inhabitant* was eligible; and of the *inhabitants*, none were eligible but those who had been *Inhabitants admitted, enrolled, and sworn* as burgesses; and of those who were *inhabitants and burgesses*, the governor, stewards, and brothers, had the power, by this charter, of nominating whom they thought fit—but this was afterwards materially altered by the charter of James I.

It should also be observed, that it is impossible to read a clause of this charter without being convinced, that it was the full intention of the queen; in some parts of the charter expressed—and in others directly implied—that the persons who were to have the privileges and perform the offices under it, were to be *inhabitant, commorant, and resident* within the place.

BATH.

In the 32nd year of Elizabeth, a charter was granted to 1590.
Bath, on the petition of the mayor, aldermen, citizens, and *inhabitants*, incorporating the *inhabitants*, by the name of the mayor, aldermen, and citizens.

The city and jurisdiction was to extend over the wards. Wards.
 And power is given to the mayor, aldermen, and common council, to make, from time to time, of the *inhabitants* of the city, *free citizens and burgesses*, and bind them with an oath Making burgesses.
 to serve and obey the mayor, aldermen, and common

Elizabeth. council of the city, in all their lawful commandments ; and
 1590. to perform all other things which might lawfully be done to the utility and profit of the city. And by all lawful means, to maintain and defend it, and all the liberties and franchises thereof. With power to *hold a court of record*, for hearing of all suits of personal and other trespasses, within the city, &c.

But this clause does no more, than, as we have observed before, to transfer to the mayor, aldermen, and common council, the power of admitting the *free inhabitants* as citizens, which power was before executed by the *court leet*; and if so, surely the mayor, aldermen, and common council ought to exercise those powers under the same obligations as that court leet.

Leet. All writs were directed to be executed within the city :—and the mayor, aldermen, and citizens, and their successors, were to have for ever thereafter within the city, and the suburbs and liberties thereof, *a leet and view of frankpledge*, of all *men* being *citizens, inhabitants, or residents* within the city, or the suburbs or liberties thereof; to be holden and kept twice by the year, in the guildhall of the city, before the *steward* of the mayor, aldermen, and common council; at such days and times as should be agreeable to the laws and statutes of this realm of England :—and all and whatsoever belongeth to a leet or view of frankpledge, together with all summonses, attachments, arrests, issues, amerciaments, fines, redemptions, profits and commodities of the *steward* or *stewards* of the leet, or view of frankpledge.

Return of writs. The bailiffs from thenceforth were to have *returns*, as well of assise as of all manner of other writs, precepts, &c. within the city : and no other sheriff or king's minister to intromit.

The assise of bread is given : and the victuallers, as well fishers, as others *inhabiting* in the city, or any others coming there with victuals, were from thenceforth to be under the rule and government of the mayor and aldermen.

The mayor to be coroner and clerk of the market.

Scot and lot.

That all persons *dwelling* and *inhabiting* within the city should be at *scot* and *lot* with the citizens, and should be

partakers with them in all burdens and charges. That no *inhabitant* there should have challenge, or liberty, or any freedom within the city, unless he were *commonly and for the most part residing and dwelling within the city*. And that the mayor, aldermen, and all the citizens for the time being, and their heirs and successors for ever, should be free and discharged through all England, from all toll, custom, &c. And that the citizens *inhabiting* within the city, or the suburbs or limits thereof, nor any of them, should not be put with any foreigners, nor men dwelling out of the city, in any assises, juries, or inquisitions whatsoever.

Elizabeth.

Residing.

WINCHESTER.

In the 30th year of Elizabeth, a charter to Winchester recites,* that it was an ancient town, having time out of mind for the government, a mayor, six aldermen, two bailiffs, two coroners, two constables, and other public officers, of the citizens and *inhabitants* of the same city. That lands, &c. with liberties and privileges, had been granted to "the citizens and inhabitants," sometimes by the name of "the mayor, bailiffs, and commonalty of Winchester," &c.:—and that ambiguities had arisen in consequence of the variety of names. That upon the force of their *prescription* and usage, and being desirous to rectify the same, and that they should enjoy more ample privileges, the queen had granted:

1587.

Inhabitants

That the city should be for ever a *free city*:—and that the citizens and *inhabitants* should be a body *corporate*, by the name of "the mayor, bailiffs, and commonalty of the city of Winchester." And that the officers should be of the older and principal, better and more honest sort of *inhabitants* and *citizens*. That there should be 24 persons of the better and more discreet and honest *men* and citizens, to be assisting and aiding to the mayor.

Free city.

Corporate.

Officers.

Assistants.

Provisions then follow for the election of the aldermen, and the 24, from the citizens and *inhabitants*.—That they should hold twice a year, as accustomed, the *boroughmote court*, *leets*, *law-days*, and *views of frankpledge*, of the *inhabitants*.

Boroughmote.
Court leet.

* Rot. Conf. de anno 30.

Elizabeth. *bitants* and *resiants* within the city, and all things thereto belonging. That the mayor, bailiffs, and *commonalty*, and their successors, and all the *inhabitants*, should be acquitted and discharged from the *suit of the county and hundred courts to the sheriffs belonging*—with quittance from toll. That no *inhabitant* or *resident* within the city should be impannelled with foreigners upon assises, juries, &c. unless it concerned the king or queen. The mayor to be the clerk of the market, with assise of bread and ale, &c.

Suits of
shires.

That the mayor, bailiffs, and commonalty might establish a guild or fraternity of one master, two wardens of every art used or occupied within the city; and that they, with the assistance of the wardens, might make ordinances for the government of the same, so that they were not repugnant to the statutes of the realm.

TOTNESS.

1596. In the 38th of Elizabeth, a charter was granted to the mayor and burgesses of *Totness*,* directing, amongst other things, that 14 men, of the better and more substantial burgesses of the borough, *inhabitants* within it, should be called *masters* and *counsellors*. And that they might yearly elect of the burgesses, *inhabitants* within the borough, two of the masters and counsellors, of whom the burgesses *inhabitants* should elect one to be mayor. And power is given to the mayor, counsellors and 20 burgesses, to make bye-laws.

14 Inhabi-
tants.

Masters.

Mayor.

Bye-laws.

1596.

Agree-
ment.

Two years afterwards, we find an agreement respecting the 20 burgesses mentioned in this charter, which recites the power given to the masters and counsellors, and the 20 burgesses, to make ordinances for the government of the town, and the burgesses and *inhabitants* thereof; and that doubts had arisen, whether the 20 burgesses had voices in making the ordinances; whereupon it was agreed, that 20 burgesses, *inhabiting* within the town, being men of ability, and elected by the general consent of the mayor, masters and burgesses of

* Richard Edgecombe this year sold the manor of the borough of Totness to the mayor and burgesses, reserving a rent of 21*l.*: and, as it is said, a *burgess-ship* also for his family. 2 Bro. Will. 278.

for the making of ordinances, &c. should have a voice in assenting to them—as long as they should continue dwellers and inhabitants in the town. And that when any of the 20 burgesses should happen to die or be displaced, or remove his dwelling out of the town, the mayor and burgesses might elect others of the burgesses inhabiting in the town in their place; who should continue only as long as they should inhabit and dwell in the town.

That all laws and ordinances that might be made, should be entered in a book, and published at the next law court Courtleet. (court leet) to be holden within the borough.

Here we find the mayor, counsellors and 20 burgesses, making amongst themselves an agreement for filling the vacancies of the 20 burgesses, nearly in the same words as the clauses for the same purpose in the charters of this reign: and as the bye-laws made by the burgesses of Eye, which we have before noted.

There can be no doubt that this body had the power of making this agreement: for the charter required the 20 burgesses to be inhabitants, and therefore the provision, that they should act in that character only as long as they inhabited in the borough; and that others should be appointed in their places when they should remove their dwellings out of the town; was in strict accordance with the spirit and intention of the charter; and, according to the proper office of a bye-law, carrying into full effect that which the charter intended to prescribe.

It should not be overlooked, that these bye-laws are to be recorded at the law court or court leet.

Law court

WELLS.

The following letters from the Burghley Papers, relative to the borough of Wells, so decisively show the anxiety which at that time prevailed throughout the country to obtain charters of incorporation; and the consequences which were apprehended and followed from that innovation, that it is impossible to resist the insertion of them.

Elizabeth. " May it please your good lordship to be advertised, that
 1574. the townsmen of *Wells** have *gotten a corporation lately*, whereby (if they shall enjoy the same) they do not only inherit the queen's majesty's grants, and the grants of her highnesses progenitors, but also take away her majesty's own commodities for ever; and shall thereby take away the liberties belonging to the bishoprick confirmed by her majesty to me and my successors: for the which I do, and they shall, pay a yearly portion, and shall receive nothing for the same. I am desirous to answer their untrue suggestions. I will be reported by town and country, worshipful and others, in what wist the town of Wells hath been governed since I have been bishop. I shall humbly desire your good lordship to be my friend, and to consider *how many towns, by means of new corporations are come to decay*:—whereof we have good experience, both within this shire, and not far off without, in sundry and divers places. If it might please your lordship, at your leisure, to command this bearer to attend, he shall give your lordship further to understand. My duty to the queen's majesty constraineth me to complain; and the
 Decay. piety I bear to the town, *which is like to come to decay*, moveth me to be an humble suitor to your lordship. I shall not forget (as my bounden duty is) to pray for your lordship's prosperity during life.

" At Wells, this 25th of April 1574.

" Your lordship's daily orator, Wills, Bath and Wells."

Corpora- " If it shall please your lordship to be advertised,† that
 tion. if the townsmen shall enjoy their *corporation*, as they call it, grounded upon an old (as they would blind the eyes of the world) but utterly defaced grant, as it doth appear by King Edward the Third, they shall work in the end their own destruction, and shall covertly carry away the commodities belonging to the queen's majesty and her successors, and spoil the bishop that now is, and those that shall follow after him for ever. The town hath no trade whereby to

* Burghley Papers, Lansdowne MSS., No. 19, p. 3.

† Burghley Papers, Lansdowne MSS., No. 19, p. 64.

maintain a mayor, a justice of peace, a recorder, a justice, ^{CHURCH.} and two other justices, within the same town, which they 1574.
have now gotten by this their *corporation*. The mayor that now is, not being able to give his serjeant meat, they are constrained, notwithstanding their attendance, to seek their meat at home or elsewhere; and the next year, they must either have a *shoemaker* or a *baker* to be their mayor, and so a *justice of peace*. The town is poor, and standeth by handicraft men, which if the bishop were not present, and the masters of the cathedral church, (for whose causes there is great resort to the town,) they were not able to get their bread, much less to feed others. There are three or four lately gotten up, very desirous to have the stock and land of the town into their own hands, thinking by dominion (if they could get the bishop's liberties) to bring the *commonalty* of the town, and the country that resort there two market days — viz. Wednesday and Saturday — into such bondage, that thereby they will not seem only to be rulers, but also to get great gain. Even so they did in the said King Edward's days: whereupon he was moved to deface propter melius et majus commodum, the grant that he had made them before their faces. I use the terms of the book-case, well known to the learned in the law. It may please therefore your good lordship to consider thereof; and for the better quiet and commodity of the town, to take such order as shall be for furtherance of the same. They shall be bound of duty to pray for your lordship's prosperity, and I shall not fail during life so to do. At Wells, this 7th of February, in the 17th year of the reign of Queen Elizabeth.

“ Your lordship's daily orator,

“ Wills, Bath and Wells.”

“ It may please your good lordship to be advertised,* that the townsmen of Wells, perceiving that they cannot prevail by law, seek, by all sinister means, to molest me, and (as I believe) to make a supplication to the queen's highness for the having of a *new corporation*, only to maintain the name of ^{New corporation.}

* Burghley Papers, Lansdowne MSS. No. 19, p. 66.

~~Elizabeth.~~ the mayor, recorder, two justices; so that they may have *four*
 1574. *justices* of the peace within the town—which thing was never heard of in that town before. They also (as I fear) intend, by a multitude, to make an exclamation against me; and to suborn such matter, in malice, as they possibly can, to discredit me. My humble suit unto your good lordship is, that I may not be evil thought of till I come to my answer; and then I doubt not, but, by the grace of God, I shall so answer them to every point, that they shall have final joy of their evil doings. Thus I trouble your good lordship, praying the same to stand my good lord, as hitherto you have done, and I shall not fail (as my bounden duty is) to pray for your lordship's prosperity during life. At Wells, this 28th of February, in the 17th year of the reign of Queen Elizabeth.

“Your lordship's daily orator,

“Wills, Bath and Wells.”

It seems that the townsmen succeeded in their applications to the queen, and pacified the bishop; and that her majesty had granted a corporation to them, which was finally embodied in a charter, and confirmed to them in the 31st year of her reign. The books record some of the means which were used to obtain this grant. It appears that, in the 23rd year of Elizabeth, “an offer was made by the common council, to “Mr. Attorney, of 20 marks and all costs, for a new charter.”

1587. And, in the 30th year of Elizabeth, it is also said, that 100*l.* was paid to Mr. Godwin, for the goodwill of the bishop in obtaining the new charter. And the masters of the different occupations gave money for procuring it.

1588. It recites, that it was an ancient and populous town, and
 Free city. granted that it should be a *free city* or borough, and the
 Corporate. burgesses a body *corporate*, by the name of the “mayor,* masters, or burgesses.” And that the city should be governed by one mayor and 23 burgesses; who should be called the

* The name of “*mayor*” seems to have been given to the head officer for the first time by this charter; as the term “*magister*” appears, from a recital at the close of the charter, to have been used as late as the first and second of Philip and Mary.

common council; with power to make bye-laws, for the govern- Elizabeth.
ment of the burgesses and *inhabitants*.

The provisions in this charter extending to a great length, 1695.
and presenting no distinguishing characteristic from those we have already cited, we shall refrain from further quotation.

With reference to this charter, it should be observed, that, in the eighth year of William III., in an action of debt upon a bond,* made by the corporation, by the name of "the mayor, aldermen, and burgesses," a special verdict was found, that Queen Elizabeth, in the 31st year of her reign, created them a corporation, by the name of "the mayor, masters, and burgesses of Wells;" and that King Charles II., in the 35th of his reign, granted to them, that they should be known by the name of the "mayor, aldermen, and burgesses," &c. And by this last name they entered into the bond; and if Misnomer.
this be the bond of the "mayor, masters, and burgesses of Wells," then, &c. And it was adjudged for the defendants; *because by the taking of the second letters patent, the first name is entirely extinguished.* But it was agreed, that a New charter.
corporation might have *two names—the one by prescription, and the other by grant*; or both by prescription, but not two by grant.

This charter of the 31st of Elizabeth, could not have 1588.
altered the *class* of the *burgesses*, for the reasons given Burgesses.
before: and there is no difficulty in showing that it did not purport or attempt to do so; for there is no express provision to change the description of the burgesses; nor is there any necessary implication by which they must be considered as having been changed:—on the contrary, the inferences are, that they were intended to continue as before, and that they were to be the *free inhabitant householders*.

The grant is to the "*burgesses*," as the body then existing; and in addition to their other privileges, they are to be a body corporate—which did not alter their class or description, but only gave them the power of taking and granting, and of suing and being sued in their corporate capacity.

* 1 Lord Raym. 80, Knight v. Corporation of Wells. S. C. 1 Lutw. 408—519.

Elizabeth. The forms of entry and admission for Wells, are the same in this reign as they had been before;* both previously and subsequently to the grant of the charter; and in the following reigns.

Admissions to freedom.

Entry. The party applying to be admitted, (in the language of the entries to the Cinque Ports), petitions "to have and enjoy the liberty of the place:"—and gives, for having his *entrance* and *station*, a certain sum; and is admitted *into* the liberty, giving his pledges, as at the common law, "*pro ingressu et statu habendo et sic admissus est in libertatem.*"

Apprentice.

An apprentice is admitted in the same manner, upon a similar petition.

And in the fifth of Queen Elizabeth, an ordinance was made reciting the orders for making burgesses—which direct, **Marriage.** that every man *marrying* a burgess's daughter or widow,—or having been an apprentice,—was to pay nothing but two gallons of wine and a dozen of gloves. But *strangers* were to pay 40s.—20s. to the master, and 20s. to the common

Livelode. "*livelode.*"

That order was repealed in the 15th of Elizabeth, but restored again two years afterwards.

Discom-
moned.

In the ninth of Queen Elizabeth, one is "*discom-
moned,*" by the *consent of all the burgesses*, because he had not *inhabited* within the city for the space of *one year*. And *all* the burgesses, in the 30th of Elizabeth, affirmed, that "13 persons had *lived without* the borough for a *year*" and upwards, against the ordinances of the place; and "they are to be dissociated from the society and liberty, and "not to be reputed as burgesses."

House-
holders.

That the *burgesses* were the *householders*, may be inferred from an entry in the 26th of Elizabeth, which requires that every person should have a club in his *house*.

And in the 10th of James I., an ordinance was made that **Dwell.** "the 24 should *dwell* in the town, and *not without the town*," "for more than three months in any one year." And in the 11th year, one of the common council was expelled, for being out of the town more than three months.

* Vide ante, pp. 1006, 1007.

The 24 are spoken of, as having *houses*, and *dwelling* Elizabeth.
within the town. 1592.

In the 35th of Elizabeth, there was an order made for the *burgesses* who were *inhabiting* and *dwelling* in the country, to make their *repair home*, and *inhabit* and *dwell* in their own *houses*, on pain of being *discommoned*, unless excused; and that a sufficient *watch* be constantly kept.

Watch.

In the 13th of Elizabeth, a letter from Sir Hugh Powlett was written, in the *queen's name*, desiring the *burgesses* to *elect* fit persons as *burgesses* to *Parliament*, in peril of the queen's *displeasure*. And in consequence thereof, the *burgesses* elect "John Aylworth and Henry Newton."

Nomina-
tion of
members.

The entries speak constantly of the *making* and *admitting* freemen: but up to this time never used the expression "*elected*," as applicable to the *burgesses*; although, in the books, that term is frequently applied to the elections of the officers of the borough; as well as the elections of members to Parliament.

Elected.

And when a stranger is made a *burgess*, he is stated to be *admitted*; because he has come to the town, "*quia est advena*."

That the *burgesses* were intended to be *resident* within the borough, appears from the clause which directs, that upon the death of John Ashe, the first mayor, another *burgess* was to be elected: so that it is evident from this provision, as well as from the other parts of this charter, that the *burgesses* were liable to serve the offices of the corporation; and there is a clause which subjects them to *fine* and *imprisonment*, Resident.
Fines, &c. by the mayor, if they refuse to serve.* The functions also of the executive officers, as, the justices—and serjeants-at-mace, are limited to the burgh:—therefore, neither could the *burgesses* serve the offices—nor could they be committed to gaol—nor the fines levied upon them, unless they were

* In the 14th of Elizabeth, one was *discommoned* for not serving the office of master; and so strong appears to have been the feeling against him, for not taking his share in the public functions—and so strong his apprehensions for not doing so—that he is described as having escaped, by leaping out of a little door at one side of the hall. A *burgess* also was fined, in the 17th of Elizabeth, for having made default after he had been summoned.

Elizabeth. *resident* within the burgh; and consequently *inhabitant householders*, upon whom the levies could be made. The fair inference, therefore, from this charter also is, that the *burgesses* were the *inhabitant householders*—no longer requiring in substance to be particularly characterised (although the form was still kept up) as *free*; because villainage had generally ceased—and *all persons, without distinction, were free*.

Therefore, in the 39th year of Elizabeth, the *burgesses* *inhabitants* and *inhabitants within* the city elected the members to Parliament. And in the 40th year, a view was directed to be taken of all persons whatsoever *inhabiting* and *dwelling* within the city. If they find any *strangers* not *born* within the city, to certify their names, or where they were *born* or *last dwelt*, and how long they had been there.

There were also ordinances for Wells according to the common law, against the admission of *inmates* and *strangers*, and persons not *born* in the borough: and against their continuing or trading in it, without licence; and (as the common law also required) unless the persons with whom they resided, *pledges*, would be *answerable for them*.

It should be observed, that formerly all the acts done by the 24, were at a general convention, and expressly with the consent of all the *burgesses*. But about the 23rd of Elizabeth, the 24 began to act by themselves, without such consent; and the new charter which gave them the power of *election*, and of *making bye-laws*, seems to have been obtained at their request, and through their influence.

There are also many entries in the corporation books, which *houses*, speak of the *houses* of the *burgesses*; and of their *dwelling* in the borough; besides those entries we have before mentioned, referring to their being *discommoned for living out of the borough*.

It is particularly worthy of observation, that in all the entries, which continue from Richard II. down to the 4th Charles I., “freemen” are not once mentioned:—all the admissions are *Burgesses*, of “burgesses,” and they take the “burgess’s” oath.

So far therefore, by the common law and the charters, the *burgesses* of Wells appear to be the *inhabitants*.

We shall hereafter see in what manner the decisions of Elizabeth. committees of the House of Commons, and *illegal modern usages*, transferred these rights from that class of persons to *non-resident burgesses*—arbitrarily elected—without any previous qualification—or direct connexion with the borough.

Before we close the charters of this reign, it may be useful to give a specimen of one granted to a place which, though it had returned members, was not continued as a parliamentary borough.

It was a charter granted to the borough of *South Malton*, in the 32nd year of Queen Elizabeth, on the petition of the *men and inhabitants*, for the better governing of the borough, and the *inhabitants* thereof. The *men and inhabitants* were incorporated by the name of the “mayor and burgesses.” Eighteen of the *inhabitants* were to be the common council, to aid the mayor. The same officers were appointed, and the same powers given as to parliamentary boroughs. An inhabitant of the borough was named as the first mayor; and until *ANOTHER inhabitant* should be sworn into that office. Eighteen of the *inhabitants* were named for the first council. Three for the first chief burgesses, and until other *burgesses* were sworn into those offices. If any of the 18 should die or inhabit out of the borough, or be removed, the rest of the common council were to elect other *inhabitants*. The mayor and burgesses were empowered to remove the common councilmen, and to choose *other inhabitants* in their stead, as often as to the mayor, or chief burgesses, or common council should seem meet. No foreigner, *nor any other inhabitant*, not a burgess, (excepting butchers and victuallers,) was to sell goods in the borough, unless in the time of fairs.

So also in the 41st year of this reign, a charter* granted to *Axbridge*, which had been a parliamentary borough, but was excused from sending members on account of its poverty, recites that it was an ancient and populous borough; and that the mayors and burgesses had enjoyed divers *liberties*

South
Malton.
1589.

Inhabi-
tants the
burgesses.

Mayor.

Common
council.

Vacancies

Axbridge.
1596.

* From the Corporation Records.

Elizabeth. *by charter and prescription; that certain ambiguities existed*
 1598. *in the charter of Philip and Mary:—The mayor and bur-*
gesses therefore pray the queen newly to incorporate them.
And the queen, willing to preserve the peace and government
of that borough, and that justice and good government should
be there kept and observed: grants, that it should be a free
borough for ever, and the burgesses and inhabitants a body
 Corporate. *corporate and politic, by the name of “the mayor, aldermen,*
and burgesses of the borough of Axbridge in the county of
Somerset;” and that they might be capable to purchase
and retain lands and hereditaments in fee or otherwise; give
grant, and demise them; plead, and be impleaded in all
courts whatsoever; and they should have a common seal;
and a mayor, and one alderman, to be elected out of the
burgesses; the mayor, alderman, and capital burgesses to be
the common council; and the capital burgesses to be aiding,
and assisting to the mayor, alderman, and bailiff; the capital
burgesses to continue in office during good behaviour.

LONDON.

Burgesses
by re-
demption.

We have before shown the real nature of the *usage* of admitting “*burgesses*” by *redemption*; which, in fact, arose from the ordinary course and necessities of society, by which persons were called upon to remove from one place of residence to another. And as every borough was responsible for the conduct of its burgesses, it was a necessary consequence of that responsibility, that they should have the power of rejecting any new comer, of whose character they entertained a just suspicion, or who was likely to involve them in difficulties.

On the other hand, in order to facilitate the removal from one place to another, it was likewise necessary that every borough should have the power of admitting, as burgesses, those who came to reside there, and who were of proper character.

It would obviously be reasonable, that they should contribute something to the “common stock” of the place; which would also operate as a security for their good

behaviour. And thus an introduction was afforded to the admission of burgesses, as it is termed, by "*redemption*." Elizabeth.
Such is the reasonable and practical origin of this usage.

The reader will perceive, from the following document 1597.
relative to London, in what absurd intricacies this right was Freemen
involved—and under what improper influence and regula- by re-
demption.
tions it was exercised—in this reign.

In the 39th of Elizabeth, there is a report,* touching, amongst other things, the making of freemen by redemption; and it is stated, that "there appeareth a certain kind of necessity to admit some by way of redemption into the freedom of this city. And that, during these seven years last past, with the consent and good liking of the common council of this city, and by themselves, there hath been, as well at the contemplation of letters of *divers great personages, being privy counsellors and other principal men, whom this city, for the great and continual need they have of their favours, might not well deny*, and for other just and reasonable causes, admitted into the freedom of this city, by way of redemption, every year, one with another, within seven years last past, twenty or two and twenty persons at the least: we think it fit that it be ordered, that there be no one year admitted into the freedom of this city by way of redemption, by the lord mayor and court of aldermen, above the number of 20 persons; and that they be admitted by the discretion of the lord mayor and court of aldermen for the time being, to whom in right that properly belongeth, (without troubling the common council therein, to whom in nowise it appertaineth,) for such *fine* as to the lord mayor and court of aldermen, in their discretions, should be thought fit.

Twenty
a year.

Fine.

"Provided always, that it should not be lawful to the lord mayor and court of aldermen, to make any more, or greater number, in any one year, free by redemption, than 20; one half to be made free on the second court day after Easter—the other half, on the second court day after Michaelmas; and that all *suitors* for freedoms should be adjourned to those two days only.

* Rep. 24, fol. 138.

Elizabeth. "And if any lord mayor or alderman should attempt to
 1597. break this act, he shall forfeit 10*l.*, to be paid to the chamberlain, to the use of the commonalty.

"Provided always, that over and above the number of 20 aforesaid, it shall be lawful for every alderman, upon his first taking upon him to be alderman, to *present* and nominate a freeman, to be admitted by redemption into the liberties of this city, as hath been accustomed. That it shall be lawful for every lady mayoress for the time being, to have the nomination or *presentment* of one man, to be admitted into the freedom of this city by redemption, as hath been accustomed. And that it shall also be lawful to the lord mayor and court of aldermen, to re-admit any person who shall hereafter be disfranchised, into the freedom and liberties of this city."

1600. And in the 42nd of Elizabeth, it was declared, that the chamberlain should *present* six out of the 20 redemptioners—delivering out of the fines, to the lord mayor yearly, four tuns of the best claret.*

1602. In the 44th of Elizabeth, the common council were moved, at the request of the Bishop of London and the secretary to the lord treasurer, for two apprentices having served only six years, to be admitted to the freedom.†

EVESHAM.

1597. A long record of a suit relative to the borough of *Evesham*, affords so much information respecting that borough, from the beginning of the reign of Henry VIII., and immediately after the dissolution of the monasteries: as well as respecting
 Leet. the *courts leet* of that place in the reign of Queen Elizabeth,‡ that some extracts from it will be warranted.

In the 39th year of Queen Elizabeth, a suit was instituted in the Court of Exchequer respecting the due holding of the *court leet* of this borough, and the perquisites of the courts there.

Long depositions were filed, many of them made by very

* Rep. 25, fol. 131 B.

† Rep. 26, fol. 33.

‡ See before, p. 1004, court leet, temp. Edw. IV.

old witnesses.* One of them had been a monk of the abbey, ^{Elizabeth.} and spoke to his knowledge of the town for 70 years, and of ^{1597.} the monastery for 21 years.

Eight other witnesses, some of a considerable age, and others less advanced in life, brought the evidence down to the time of the suit, and spoke to many facts relative to the town and monastery, as well as to the matters in dispute in the cause; of which the following are the principal, in their order of time.

Littleton, one of the monks, described the town as having ^{7 H. VIII.} been, during all the time of his remembrance, subject to the direction of two *bailiffs* for the time being, as the chief ^{Bailiffs.} governors and rulers within it, under the queen's progenitors; that the abbots of the monastery had never elected or chosen the bailiffs of the town: but that one *Clement Litchfield*† being some time since abbot, requested the *inhabitants* ^{Inhabitants} of the town, that one John Matthews, then chief cook of the abbot, might be chosen bailiff, but the *inhabitants* refused so to do; saying, that "they would not seek their "bailiff in the abbot's kitchen." Whereupon the abbot provided another cook. And the *inhabitants* then chose Matthews bailiff for the town for that year; and he further stated, that the queen, and not the abbot, had been reputed owners of the *leet*; and that the bailiffs had nominated the ^{Leet.} jurors.

Austin confirmed the statement of *Littleton*, and added, that the abbots had had no rule or government in the town; and that the bailiffs, during all his time, had been chosen by

* Mr. Tindal, in his history, quotes a fragment of these depositions; but seems to think that they lessen the jurisdiction of the abbot more than truth would warrant: but on the whole, the account given by the witnesses appears consistent with the general common law, and highly probable; and perhaps Mr. Tindal would have thought so, if he had seen the whole depositions and the decree.

† Tindal commends this abbot for his learning and virtues, and describes him as a munificent patron of the monastery, which he repaired, advanced, and enlarged—and he adds, that he was a man who cannot be mentioned without emotions of pity and reverence. He became abbot in 1513, and continued so till near the dissolution of the monasteries, when being unwilling to surrender the abbey to King Henry VIII., he was, by Cromwell's arts and devices, obliged to resign his office, and was succeeded, in 1539, by Philip Hawford, alias Bullard, one of the monks, who surrendered the abbey in the same year.

Elizabeth. the *jury* sworn at the great *leet* holden about Michaelmas;—

1697. that the bailiffs of the town had had the profits and perqui-

Jury. sites of the *leets* and the three weeks' court, &c. He confirmed also the statement that the abbots had never chosen the bailiffs, and added, that they had no right by prerogative or authority, to intermeddle with the bailiffs of the town, who had all the interest in every thing, and that they nominated the common crier; and he mentioned the names of

Inhabitants three successive bailiffs, who were chosen by the *inhabitants* of the town during the reign of Queen Elizabeth; and he added, that all controversies and debates in the markets and fairs before the dissolution of the monastery, were heard and determined before the bailiffs of the town, who also had the assise of bread, and the correction of the weights and measures with the clerk of the market, when he happened to come to the town.

Payne confirmed the same facts, and particularly specified the manner in which the bailiffs were elected, namely, that

Jurors. the *jurors* sworn or charged to inquire of matters inquirable

Leet. at the great *leet*, there holden yearly, about the feast of St. Michael, nominated six honest, substantial, and discreet *persons* of the town to stand in election for the office of bailiffs, and delivered the same in writing to the steward of the leet, who pricked two of the same persons to be bailiffs for that year. That the bailiffs have always been reputed to be the chief officers and governors of the town under the kings and queens of this realm; and that he never knew either Sir Philip Hobby, or Sir Thomas Hobby, nominate any steward of the *leet*, nor any bellman, nor receive any profits of the fairs, &c.; and he spoke of Thomas Winton as having been bailiff in the time of King Edward and Queen Mary; and Philip Tolly in the latter reign.

Law days. *John Deach* stated, that two "*law days* were yearly kept in the town. Also a three weeks' court. That he was present at some of the courts, and that one Mr. Cooksey kept them at the booth hall as *steward* of the prince, and appointed by the bailiffs of the town; he stated, that he had

Jury. heard that the *jury* at the *leet* used, before the dissolution, to

make the same elections as they then did. He stated that the like courts were holden within the town since the time of Henry VIII. as they were before, and by the prince's *steward*. Elizabeth. 1597.

Henry Dingley confirmed the bailiffs being the chief rulers and governors of the town under the queen, and that there were two bailiffs of the town; and that he well remembers one of the masters of the monastery, a little before the dissolution, making earnest suit to the *inhabitants*, that a kinsman of his, *habiting* within the town, might be one of the bailiffs, which, upon his earnest request, was granted; and he spoke of being present at a court holden within the town, when one William Brantley was chosen bailiff; and that he then heard Sir Philip Hobby say, that he could choose the common crier; to whom Brantley answered, that he should not, for that he was bailiff; and if he might not choose the common crier according to their ancient custom, he would disfranchise himself, and would not be bailiff. Whereupon Sir Philip seeing that Brantley would not permit him to choose the crier, asked him whom he would choose, to whom Brantley answered, one Bickerstaff. Whereupon Sir Philip said, "Thou hast chosen the man that I would have chosen." Inhabitants. Bailiffs.

Wm. Littleton said, that no courts had been held in his remembrance but by the bailiffs. That Sir George Thrakmorton was steward of all the abbot's lands, and William Cooksey under-steward. Bailiffs. Steward.

John Wilks stated, that he was a scholar in the town of Evesham, and boarded in the armoury of the monastery, before the dissolution, when Clement Litchfield was abbot. That before the dissolution there were *two law days* kept in the town, one at Easter, and the other at Michaelmas. Law-days.

Robert Andrews stated, that one George Hawkins kept a court *leet* within the town about May, as *steward* appointed by Sir Philip Hobby, but that the court was holden in the queen's name, as other courts before. He spoke to the mode of pricking the bailiffs, as formerly observed, and that about 10 years ago, the Lady Russell sent him (then her servant), to Mr. Cooksey, the then steward, and before his going, Leet. Steward. 1587.

Elizabeth. Lady Russell told him, that he should have the honour of
1597. pricking old Hawkins to be one of the bailiffs, and desired

him to tell Mr. Cooksey that her will was, that Hawkins should be chosen bailiff for that year, which message he delivered accordingly; and when he went into the town,
Jurors. he went to the *jurors*, and delivered to them his lady's pleasure, and some of them were willing to do the same and some were not. Whereupon Mr. Cooksey went up to the *jury*, and dealt with them to the end that they should put Hawkins in election; whereupon the jurors afterwards delivered in writing, amongst other names, that of Hawkins, and afterwards he (Andrews) by the consent and privity of the steward, pricked Hawkins as one of the bailiffs for that year, and he was sworn accordingly.

John Smith stated, that the six persons to be named by the *jury* to the *steward* were, three of the parish of All Saints; and three of the parish of St. Lawrence; two of whom the
Jurors. steward pricked; and sometimes asked the jurors what liking they had of them, and the jurors always assented to them.

William Smith also confirmed that the abbots never elected the bailiffs of the town, but that he had heard, that the
Inhabitants abbot would sometimes request the *inhabitants* to elect one of his *servants*, of whom he conceived well, to be one of the bailiffs. And that he had heard, that the abbot had many the most substantial inhabitants, who were his servants and towards him, and for whom he sued advancement in that behalf; and he said, that such freemen as were obstinate, and not conformable to the orders of the town, and did not obey the bailiffs in matter of government, were, at the discretion of the bailiffs, and other the *ancients* of the town, *disfranchised*; and that done they were to pay all toll, stallage, and other duties, as *foreigners* used to do; and that the *freemen* of the town came to be freemen there by their *good behaviour*, and other good and honest means; that franchised men
Ancients. of the town took an oath* at the time when they were made
Disfranchised.
Freemen.
Franchised Men.
Oath.

* This oath was administered at the court leet, according to the rules of the common law; and the obligation was expressly restrained to the time the party should continue to reside in the town.

franchised, which was administered by the *steward of the court*, Elizabeth.
 that they would be true franchised men, and true faith bear 1597.
 to the king and his heirs, and should be obedient to the
 bailiff of the town, and be from time to time aiding and
 assisting him and the constables in the execution of their
 offices, and not to refuse such offices as they should be chosen
 and appointed to bear: and that they should not go about to
 impeach in any manner of way, but to their power maintain
 and support the same, so long as they should be *inhabiting*
 within the town.

George Blokely stated, that he was present at the *leet* Leet.
 holden in the new hall, by Bartholomew Kighley, about
 October, in the 26th year of her majesty's reign, at which
 court Kighley said he was authorized to keep it by one Dynne,
 auditor to her majesty, and shewed a patent made to Dynne
 by her majesty, and used some speeches to the suitors
 there present, letting them to understand, that the *leet* was
the court of her majesty, and that Sir Edward Hoby had
 nothing to do to keep any court there, and that they owed
 no suit nor service to the complainant, but to *her majesty's*
leet. That one William Warner, bailiff of the hundred of
 Blockenhurst, in the county of Worcester, by precept from
 one Mr. Rowland Broughton, then steward to Sir Edward
 Hoby, summoned a *court leet*, to be held within the town,
 about April 1585; and that the *inhabitants* had notice 1585.
 given to them to make their appearance there. That he was
 present at the court, which was holden before Edward Lyt-
 tleton, Esq., and that he himself was one of the *jury*. That
 the court was holden in the market-place, under the new
 hall, in the open street, and that the *steward* and *resiants*
 were there. That the door of the new town-hall was locked
 against the *steward*, and that he was kept forth of the hall,
 and therefore was enforced to keep the court in the common
 market-place, and that the serjeants kept the door of the
 new hall with their staves, and the *steward* charged them in
the queen's name to serve in the *court leet*.

William Biddle spoke of the *bailiffs* being the *chief* Bailiffs.
officers; and that before the dissolution, the *jurors* chose

Elizabeth. them, without nominating or setting down in writing the
 1597. names of any other person to stand in election with them ;
 but that since the dissolution, he had credibly heard reported,
 and it was manifestly known, that Sir Philip Hobby, knight,
 deceased, made suit to the *chief inhabitants* of the town,
 Jurors. that the *jurors* might set down in election for the office
 of bailiffs, the names of six honest and discreet persons of
 the town, of either of the parishes there ; and that he, or
 the steward of the leet, might have the pricking of the
 bailiffs, which was yielded unto, and the same manner of
 election hath continued ever since.

House- *Thomas Bumford* said, he thought there were 300 *house-*
 holders. *holders* within the town, and that the abbots never chose
 the *bailiffs*, but that he had long since heard by many cre-
 dible reports, that an abbot of the monastery made suit to
 Inhabitants the *bailiffs* of the town, that the *inhahitants* would choose
 one Mr. Woolridge to be one of the bailiffs, which they
 refused to do, and did not gratify the abbot, because they
 had no liking to the gentleman—that the *queen* and her pro-
 Queen's genitors had always been reputed the owners of the *leet*.
 leet.

John Rapp also negatived the abbots ever having elected
 the bailiffs : but that Clement, when abbot, requested the
 Inhabitants *inhabitants* that one Aunton, being towards the abbot, might
 be one of the bailiffs, which request was yielded unto. He
 also spoke of the old and new hall, and the keeping of the
 courts there ; that freemen who showed themselves con-
 temptuous or disobedient to the bailiff in matter of govern-
 ment, or that were notoriously known to be of lewd and
 evil conversation, were, by the direction of the bailiff, and
 other the *ancients* of the town, *disfranchised*, and, being so,
 Ancients. were to pay all toll, stallage, and duties, as *foreigners* ; and
 Disfran- that the *inhabitants* there came to be *freemen* by compound-
 chised. ing with the two bailiffs for the time being. And the free-
 Freemen. men have greater liberties, franchises, and privileges within
 the town than *foreigners* and *strangers* ; and he stated, that
 Oath. when freemen were admitted they took the *oath*.

Henry Strayne stated, that, about two years before, when
 the *bailiffs* were desirous of going into the new hall, one

Thomas Cossar stood at the door and pushed them back, and Elizabeth. would not let them go in. 1597.

George Hawkins, Clifford's Inn, stated, that his father was appointed by Lady Russell to keep the *leets* and three weeks' courts in the new hall; and he kept them there during the minority of Sir Edward Hoby; and that he knew several bailiffs of the town, and that he was present when one Bartholomew kept the *leet*, on the 6th of April 1581, in the town hall; and that Kighley was appointed by Sir Edward Hoby, and that his father kept the *court leet* in the 26th year of her majesty's reign, as *steward* of Sir Edward; and that whilst his father kept the courts, the *jury* nominated three persons out of each of the parishes, out of whom the *steward* pricked one of each parish; and he confirmed the statement of the former witnesses, particularly as to Dynne's patent, and Bartholomew Kighley, as deputy of Dynne, disputing Sir Edward Hoby's right to appoint a *steward*; and that there was a *leet* held the 15th April 1585, before Mr. Littleton, counsel-at-law. 1581. 1585. Steward. Jury.

These depositions fully disclose the ancient mode of electing the *bailiffs* at Evesham; and the method of appointing the *juries* and their functions; and of admitting *freemen* at the *court leet*. And it is evident from this record, that the whole of the municipal government of Evesham was in early times managed by and at the *court leet*. And that the system continued at the time of this suit:—the usurpations which were attempted, consisting chiefly of encroachments upon the functions and jurisdiction of that court. Observations. Bailiffs. Leet.

The decree founded upon these depositions, recited letters patent of the 38th of Henry VIII., granting the *view of frankpledge*, to Sir Philip Hobby; and declared, that, for the future, he should nominate the *stewards* of the *leet*; which was to be held yearly in the new hall of the town; and that the *juries* sworn there, should nominate to the *steward* six of the *substantial franchised inhabitants*, three of each parish; out of which six, the *stewards* should name one of each parish to be the *bailiffs*; and in default of the *stewards* so doing, the *jury* should select two persons. Decree. 1546. Frankpledge. Steward. Franchised inhabitants. Jury.

Elizabeth. The "*compounding* with the bailiffs" before a person is admitted freeman, which is mentioned in the depositions, is in fact making a *contribution to the general stock of the town*, in the manner we have before pointed out in many other places, according to the practice and principles of the common law.

Common stock.

Statutes. Some extracts from the statutes, and a short reference to a few cases in the courts of law, will close the documents of this reign relative to England.

**1586.
Cap. 4.** In the 29th year of Queen Elizabeth, a statute was enacted to prevent extortion in sheriffs, under-sheriffs and bailiffs of franchises or liberties, in cases of execution; which contained a proviso, that it should not extend to *cities or towns corporate*.

The queen, who had secured an ascendancy in Parliament, easily obtained, at this time, a subsidy of 6s. in the pound from the clergy, and two fifteenths from the temporalty. And in the 31st, 35th, 39th and 43d years, grants and confirmations of subsidies were made; for which the queen as frequently in return confirmed her general pardon.

Cap. 7.
Cap. 8.
**1587 to
1599.
Cap. 14
& 15.**

**1592.
Cap. 2.** The queen also, in the 35th year of her reign, framed enactments against the Popish recusants; their *residence* being restrained to certain specified places.

Cap. 6. Provisions were also made in the same year against converting houses in London and Westminster into more tenements; and against *inmates*.

Cap. 4. In the 39th year, a statute for the punishment of rogues and vagabonds.

**Cap. 7.
Sec. 27.** In the 35th year, we also find a statute, consequent upon the dissolution of the monasteries, and preparatory to the provisions of the 43d of Elizabeth, authorizing any person, for twenty years then next ensuing, to make feoffments, grants or any other assurances, or wills, to bequeath, in fee simple, as well to the *use of the poor* as for the provision, sustentation or maintenance of any house of correction or *abiding* houses, or of any stocks or stores.

Poor.

And the 39th of Elizabeth, in like manner provided for the erection of hospitals and houses for the *abiding and working of the poor*: by which a similar power is given for the conveyance of lands, as well as for the finding sustentation and relief for the *maimed poor, needy and impotent people*, and to set the poor at work; incorporating the parties for such purpose, and giving all the ordinary corporate powers to them for the purpose of securing the objects of the statute.

Elizabeth.

Cap. 5.

Poor.

Incorporation.

It is also material, with reference to the important city and liberty of *Westminster*, to extract the following statute of the 27th year of Elizabeth, not in Ruffhead, but in the statutes of the realm lately published by the commissioners: and also amongst the Harleian MSS.*

Westminster.

1584.

It commences with a recital, that the *people* within the city or borough of Westminster had then of late very much increased, and were given wholly to vice and idleness: and enacts, that the city or borough of Westminster should continue severed and divided into 12 several *wards*.†

Wards.

That for the government of the *people inhabiting* within the wards, the dean of the collegiate church of St. Peter, or the high steward, should elect 12 persons *inhabiting* within the borough, who should be called *burgesses*, one of whom should be appointed to each ward,‡ to continue for their lives, *if they should so long inhabit there*, except they should misconduct themselves.

12 burgesses.

That if any person *resiant* should refuse to accept the

Resiants.

* Vide etiam, Harl. MSS. 1831.

† In Cro. Eliz. 260, it is said, that "wards" in London are as hundreds in the country, and the parish as the town.

‡ It is a curious historical fact, that an analogous system of police prevails in China, to that which was used by our Saxon ancestors in this country:—thus, every city is divided into *wards*, and every ward has a principal, who takes care of a certain number of *houses*. He is answerable for every thing that happens; and if there should chance to be any tumult that the mandarin is not immediately informed of, he is severely punished.—Auber on China, p. 56.

Masters of families are equally responsible for the conduct of their children and servants; and those in authority are rendered culpable when their inferiors, who should pay them obedience and reverence, have committed any criminal acts.—Vide Preface to the Laws of China.

Elizabeth. office, he should forfeit the sum of 10*l.* for the use of the
1584. poor.

That the dean, or his high *steward*, with the 12 burgesses, might elect 12 other persons, *inhabiting* within the city or borough, to be assistants to the 12 burgesses, who should have the same powers as aldermen's deputies in London, and remain in office one year, *if they should continue their habitation within the city or borough.*

That the dean or the high *steward* should yearly nominate two persons out of the 12 burgesses, who should be known by the name of "the two chief burgesses."

That the dean, *high steward*, the two chief burgesses, or the other ten burgesses, might punish, according to the law of the land, or custom of the city of London, all matters of *inmates*, &c. and commit such persons to gaol, giving notice thereof to some justice of the peace within the county of Middlesex; and that they should have power to make ordinances, &c. for the government of the borough.

It will be remembered, that Westminster is not mentioned in Domesday*—that in the reign of Henry VI., it is described as within the franchise of the city of London†—and in the reign of Edward IV., it still retained its ecclesiastical character, being under the jurisdiction of the Abbot of Westminster.‡

This act of Queen Elizabeth, appears to have been intended for the purpose of giving Westminster, in consequence of its increased population, the character of a *borough*; not making it a corporation, but establishing a separate jurisdiction, in analogy to the ancient system of the *court leet*; having, out of the *resiants*, two bodies of 12 persons—resembling, like the *jurats* of the Cinque Ports and other places, the *juries* at the court leet, in conformity with the law of which court, the executing those functions is made *compulsory*: and a material part of their jurisdiction related to the "*inmates*,"§ of

* See before, 173.

† Ante, p. 933.

‡ Ante, p. 1010.

§ In 4 Leon. p. 10, it is said, that "*inmates*" are, where there are more families than one. And "an inmate is such an one who is at his own finding."

which we have seen such frequent mention in the proceedings ^{Elizabeth.} at court leets, and viewers of whom, in the several wards, appear to be appointed in the books of Ludlow, in the 28th ^{Ludlow. 1585.} of Elizabeth.

At which time also, directions were given at Ludlow, that proclamation should be made in the four wards, that every *inhabitant* should forthwith put out of his house and service all persons, other than *guests*, which have not *dwelled* within the town for three years,* or had not been retained in service according to the statute; and the searchers are directed to make particular inquiry, as to offences against those provisions.

In the 34th of Elizabeth, a similar search is also directed ^{1591.} to be made in Ludlow in the several wards, as to the *poor*— ^{Poor.} and of what continuance they have been in the town, and how they lived.

It is not immaterial to our present inquiry to observe, that ^{Members' wages.} several entries in the books of Ludlow, shortly after this period, and till the ninth year of James I., speak of the allowance of the *burgesses fee* for attendance in Parliament, which is directed to be assessed upon the "inhabitants;"† and "sessers" are appointed accordingly for the several *wards*. And at the same time, there is an entry of a complaint made, that divers persons had intruded themselves upon the tradesmen in the town. The bailiffs are directed to suppress all manner of tradesmen, being *strangers* and *foreigners*, who intrude upon the liberties, and who were not licensed, nor qualified to work within the town, according to the charter and laws of the realm. From which it will appear, that the modern distinction, to which we have before adverted, between the *freeman* (or *liber homo*) of the common law, and ^{Freemen.} the *freeman, licensed to trade*, is distinctly marked.

* See post. charter to Warwick, 5 W. and M. 1694.

† Vide post., Southwark—temp. James I., in 1702, upon a Southwark petition, it was said that "none ought to vote but such as were liable to pay wages to their members, and those were only such as paid scot and lot."

Elizabeth.

CASES.

County
courts.

In the following case, the county courts, as well as the officer of the sheriff who was to hold them, are expressly mentioned—also the duties and jurisdiction of the sheriff; and the power of the crown to interfere with that office is canvassed.

Sheriff.

It is probable, that the following decision was founded upon the same principles which had before induced the grants of charters, making boroughs counties of themselves; a practice which also continued after this time.

1583.

County
courts.

Mitton's Case.—The queen granted the office of clerk of the county court, or shire clerk of Somerset, to one Mitton, with all fees, &c., for his life. The sheriff conceiving this to be an appointment incident to his office, chose another:—upon which Mitton appealed.* And it was determined,

Sheriff.

that the letters patent were void in law; because the office of a *sheriff* is an *ancient office*, which has had continuance long before the Conquest; and is an office of great trust and authority. For the king commits to him "*custodiam comitatûs*." And when the king appoints a sheriff "*durante bene placito*," although he may determine his office at his pleasure, *yet he cannot determine it in part*, as in one town—or hundred—or any other part. Nor abridge the sheriff of anything incident or appurtenant to his office. For the office is entire; and so ought to continue in its entirety, without any fraction or diminution:—unless it be by act of Parliament; or, that *the king makes some town, &c., a county of itself*: and appoints a *sheriff*, and all things incident to a sheriff, within the same town. But he cannot determine the office of sheriff, or any part, without making a *new sheriff* for the execution and administration of justice. That the county court, and the entering of all the proceedings in it, are incident to the office of sheriff; and therefore cannot by letters patent be divided from it.

In a subsequent part of the same case, it was held, "that Gaols. the grants of gaols to any other persons but sheriffs, were

* See Mitton's Case, 4 Co. 33.

void ; because they were the immediate officers to the king's Elizabeth.
courts."

Another case also occurred, in the 30th of Elizabeth,* 1587.
respecting the grant to Coventry, that it should be a county Coventry.
of itself.

This case was moved upon the statute of the first of Philip and Mary, chap. 12. The town of *Coventry* was within the hundred of Offley, in the county of Stafford ; and Queen Mary, by her letters patent, made it a *county*.† A distress was taken on the residue of the hundred, and brought into the town of Coventry—and if that be within the statute, was the question. It was holden by the court, clearly, that now the *town of Coventry is exempted out of the hundred aforesaid, and is a thing by itself* ; and it is a good challenge for the hundred of Offley, that the juror challenged *dwells in the town of Coventry*—for now it is not parcel of Offley, as to the king. But as to the lord of the hundred, the town remains parcel of it, notwithstanding the queen's grant. And the citizens of Coventry shall do suit at the court of the hundred ; but in an action upon the statute of Hue and Cry, of a robbery committed in the residue of the hundred, the *citizens* shall not be charged.

In another case in the 28th of Elizabeth, in the King's 1586.
Bench,‡ relative to the town of *Leicester*, (which we have Leicester.
before partly cited),§ it was alleged that the town of Leicester was an ancient town, and ancient demesne, and the inhabitants discharged of toll.

An exception was taken, amongst others, that lands holden in *socage* only, and no other, ought to be discharged Socage.
of toll ; and here it is not shown in the declaration that the place where, &c., is holden in *socage*. To which it was answered, that it need not to be alleged, for it is implied in the words, " ancient demesne ;" for otherwise it cannot be Ancient demesne.
socage land only, and of no other tenure. A further excep-

* 4 Leon. p. 86.

† See Corbet's History of Counties of themselves. And the case in 1820, where 1820.
the question arose, Whether it was still a part of the county, and whether the free-
holders there had a right to vote in the county elections ?

‡ 2 Leon. 190.

§ See before, p. 239.

Elizabeth. tion was, that the letters patent, giving exemption of toll,
1585. were of no value; for the king by his letters patent cannot disinherit any one—nor discharge one of toll, which is a kind of disinheritance. To which it was said, That the plaintiff
Usage. doth not declare of any grant, but of a *usage* or *custom*.

And in another part of the report, Coke said, that he had found the reason wherefore such tenants should be quit of toll throughout the realm, in an ancient reading, viz.—That all the lands in the hands of Edward the Confessor and William the Conqueror, set down in the book of Domesday, were *ancient demesnes*; and so called *Terræ regis*. And they were to provide victuals for the king's garrison, for then they were troublesome times—and for those causes—and because they made provisions for others, they had many privileges, amongst which this is one, “ut quiet aratra sua exerceant, et terram excolerent.” And he said, that the plaintiff ought to allege that his lands are parcel of such a manor, for there cannot be ancient demesne if there be not a court and suitors; and he granted that such a town might be ancient demesne of the crown, yet they shall not share the liberties and privileges which the tenants in ancient demesne have.

Inhabitant. *Shute*, Justice, was of opinion, that an *inhabitant* within ancient demesne, *although he be not tenant*, should have the privileges.* Tenants at will in ancient demesne shall be discharged of toll, as well as tenant of the freehold for life, or for years.† By *Moile*—If a lord of a manor in ancient demesne purchaseth all the tenancies, the whole privilege is gone, which Coke denieth.

The case was adjourned.

KINGSTON-UPON-THAMES.

1591. Queen Elizabeth, in the 34th year of her reign, granted a charter to the freemen of *Kingston*, which commences with a recital, that it had been hitherto the custom that the *men*
Ancient demesne. and *tenants* of ancient demesne were and ought to be, quit from the payment of *toll* throughout all the realm;—and

* See F. N. B. 228 b.

† 37 Hen. VI. 27.

also from contribution to the expences of knights coming Elizabeth.
to Parliament for the *community* of the county. 1591.

That according to the same custom, the *men and tenants* of the manors which were of the ancient demesne of the crown, should not be put upon any assises—*juries*—or recognizances, Juries. unless only in those which ought to be made in the court of such manors.

That as the demesne of Kingston and Emley Bridge, otherwise Chingstune and Amelebrige, were the ancient demesne of the crown :—the queen granted that the *men and tenants* should be free of *toll*—and from the *expence of knights*. And that they should not be put in any assises—*juries*, &c., to be held without the court of the demesne; unless only in those things which ought to be done in the court of such like manors, and unless they held lands of another manor.

LOWESTOFFE.

The town of *Lowestoffe* also, having been part of the ancient demesnes of the crown, had a charter and a town seal; but the greatest privilege they now enjoy from their charter, is, that of not serving upon *juries*, either at the assises or sessions.

And in the 30th of Elizabeth, in an action upon the case,* 1587.
the plaintiff declared that *Lostock*, in the county of Suffolk, is an ancient town and *ancient demesne* of the crown; and that from time immemorial all the *men and tenants* of ancient demesne ought to be quit of *toll* in all places within the Toll. realm. And that Queen Elizabeth, in the 19th year of her reign, commanded all mayors, bailiffs, constables, &c., to permit the *men and tenants of ancient demesne* to be quit of toll, murage, &c. through the realm; that the plaintiff was an *inhabitant* and *tenant* in *Lostock*, and carried his goods to Yarmouth; and the defendant had taken and carried away the plaintiff's goods for toll.

The defendant avowed the taking, upon the grounds that the exemptions of tenants in ancient demesne extended only Ancient demesne.

* 1 Leon. 231.

Elizabeth. to the maintenance of the lands, tenements, families, &c., and not to merchandise for which the toll was taken:—in which the judges coincided.

STAFFORD.

1566. In the 9th year of Elizabeth, the queen recites : Whereas, according to the customs of our kingdom of England, hitherto used and approved, the *men AND tenants* of ancient demesne of our crown of England, of toll, stallage, chimmage, pontage, pickage, pannage, murage, lastage and passage, through the whole kingdom, ought to be acquitted : And according to the custom aforesaid, the *men AND tenants* of ancient demesne of our crown, always hitherto from time whereof the memory of man is not to the contrary, have been accustomed to be acquitted from contributing to the *expences of knights of our Parliament*, and of our progenitors in times past, kings of England, coming for the *commonalty* of the county ; and also, according to the custom aforesaid, the *men AND tenants* of manors, which are of ancient demesne of the crown, ought not to be put upon *juries* at the assises, or upon other recognitions for their lands and tenements, which they hold of the same demesne, except only touching those things which ought to be done in the courts of such manors.

Men and
tenants.
Ancient
demesne.
Toll.

Expences
of knights
of the
shire.

Juries.

Swynes-
ford and
Clent,
ancient
demesne.

Toll.

Juries.

And the manors of *Swynesford* and *Cleneth*, otherwise called the manor of *Swynford* and *Clent*, within the county of Stafford, are of ancient demesne of the crown of England, (as by a certain certificate by our Lord Henry VIII., late King of England, our most dear father, by his appointment, sent into his chancery, and among the files of our chancery, remaining upon record, to us it doth appear.) We enjoin and command you, and every of you, that ye suffer all and singular the *men and tenants* of the manors of *Swynesford* and *Cleneth* otherwise called manors of *Swynsford* and *Clent*, or either of them, to be quit of payment of toll, stallage, chimmage, pontage, pickage, pannage, murage, lastage, and passage, and from *expences of knights*, and that ye put not the said *men and tenants* of the same manors, or either of them, upon *juries*

at the assises, or upon recognitions, except only touching those Elizabeth. 1566.
 things which ought to be done in the courts of such manors,
 contrary to the usages aforesaid; and if ye have done any
 distress to them, or either of them on these occasions, release
 them from the same without delay.

CASES.

In other cases in Leonard's Reports, the *residence* of per- Residence.
 sons with reference as well to their *duties*, as to their *privi-
 leges*, are frequently mentioned.

Thus, the goods were claimed of a felon who was described
 as "*dwelling*" within the district in which they were claimed.*

Again, in another case,† in language similar to that which
 we have seen before, "*those of the town of Launceston*," are
 spoken of.‡

In Croke's Reports, in the same language as above, "*those* 1598.
of Gloucester" are mentioned.§

In Coke's Reports, "*those of London*" are twice alluded
 to.||

In an action of false imprisonment in the 42nd of Elizabeth, 1599.
 the defendant justified by a custom in *Sandwich*, within the
 Five Ports, that if the goods of a *freeman* of Sandwich come to
 the hands of a freeman and citizen of London, the mayor of
 Sandwich should write to the mayor and aldermen of London,
 to call the party before them, to make an order for the restitu-
 tion; and if they refuse, or do not return an answer to the
 mayor and jurats of Sandwich, the mayor should issue an
 alias and a pluries, and then judgment of withernam against
 the mayor and commonalty of London; in which it should
 be signified to them, that if they did not make restitution
 within 15 days, then "*those of Sandwich*" were accustomed
 to detain the body of any Londoner who should come, until
 restitution was made.¶

* 2 Leon.

† 3 Leon. 193.

‡ In the course of that case, Anderson, justice, said that patents were good with-
 out enrolment.

§ Cro. Eliz. 710.

|| 5 Coke, 63.

¶ *Paramore v. Verrall*, Moore, 603. See also Anderson, 151.

Elizabeth. The judges held the custom was good; because the Five Ports are defensive places for the realm, for which reason they cannot attend elsewhere for justice, but within the Five Ports.

1601. In an appeal* by Crispe against Viroll, late of *Sandwich*, in the county of Kent, for the murder of the plaintiff's brother committed in Sandwich by the defendant, he pleaded that Sandwich, is parcel of the Cinque Ports, where the writ of the queen does not run; and which port of Sandwich is *not within the county of Kent*; and demands judgment of the writ, and pleads over to the felony; and adjudged an ill plea, for although the Cinque Ports have several great liberties, yet the reason of the grant of those liberties, was for the ease and benefit of the *inhabitants*, and not for their prejudice; and therefore in 50th Edward III., by Belknap, if a *stranger* comes into the Cinque Ports, and commits a transitory trespass, and afterwards goes out of their jurisdiction, he to whom the trespass is done, may have an action at the common law; for it is more for his benefit to have the suit at the common law, than within the Cinque Ports; for *they have no power to summon any man that is out of their jurisdiction, (viz.—in the county of Kent or elsewhere,)* into the limits of their jurisdiction. Another reason here, was because the defendant having committed the murder in the Cinque Ports, and flying from thence, if the pleading here should be good, it would be in failure of justice; for they of the Cinque Ports cannot try, because he is not there. But by Popham, if the defendant had shown, that at the time of the murder supposed, and ever since,
- Inhabitant. he had been and was an *inhabitant*, and lived within the Cinque Ports, whereby he had by his plea, given jurisdiction to the court there, and they as judges might have seen that the defendant, if he was guilty, might have received a judgment of death, then the plea had been good. But the defendant has not shown any such thing, whereby it appears that that court has such jurisdiction.

1586. In another case,† from which the limited nature of local

* Yelverton, 12.

† 4 Leon. 149.

jurisdiction may be seen, it is said, “that to be a justice of the peace *doth not lie in prescription, for no justice of the peace was before the statute of the 1st of Edward III.,*” and *the beginning of them being known, prescription cannot be.** That it was an unreasonable prescription. “That a mayor may send for a person,” unless it be added “*within the city,*” and then it should be shown, “that they had a *corporation* which might prescribe.”

Elizabeth.
1586.

In a subsequent part of the case it was stated, that “*consuetudo and usage* are all one;” that is, *usage to be available in law should, like a custom or prescription, be immemorial.*

The nature of *watch* and *ward*:—and that it continued in this reign; and was performed by the *inhabitants*; may be collected from the following case † in the same year.

Watch and
ward.

In an action upon the statute of Winchester it was stated, “that every town and city should be *guarded* by the *inhabitants,*” &c. so that if any suspected persons did resort to such town or city, he should be stayed until the next sessions, in which case he should have deliverance according as he could acquit himself. And if any *town* or *city* failed therein, and a robbery was committed, the county should answer for it.

Again, in an action upon the statute of hue and cry, ‡ *Inhabitants* which was brought against the *inhabitants* of the hundred of Ashton, in the county of Bucks, it was moved upon the part of the defendants, that if upon such hue and cry the *inhabitants* did their endeavours to follow and take the malefactors, and yet could not apprehend them, in reason they ought not to be charged by the statute. But the court were strongly against it; for the *inhabitants* of the hundred *Inhabitants* in which the robbery was done were bound to apprehend the felons, or satisfy the party robbed: who is not bound to give notice to the *inhabitants*, nor to direct them which way the felons took their flight; but the *inhabitants* are bound to follow them without any such instruction.

Also, in the 30th of Elizabeth, in a case of false imprison- 1587.

* But see now the statute 2nd & 3rd Will. IV.

† 4 Leon. 218.

‡ 2 Leon. 174.

Elizabeth. ment,* the defendant justified, because at the time he was
 1587. constable of D., and appointed the plaintiff to *watch*, and
 Constable. he refused, by reason of which he set him in the stocks.
 Watch. Upon which the plaintiff did demur in law, because the
 Inhabitant. defendant had not alleged that the plaintiff was an *inhabi-*
 Stranger. *tant* of the town; for the constable cannot compel *strangers*
 which pass, to watch. And it was moved, if for such a cause
 the *constables* might set one in the stocks; for it was said
 that he ought to complain of the refusal to a justice of the
 peace. Also the constable *cannot appoint any to watch at*
 Turn. *his pleasure, but only in his turn*, for otherwise the constable
 might upon a private revenge vex his neighbour.

Wray, chief justice.—The defendant ought to show, that
 the plaintiff was *inhabitant in the town*, and that it was *his*
turn to watch. And if such *inhabitant* refuses to watch in
 his *turn*, the constable may set him in the stocks.

The reader will remember how perfectly this case sup-
 ports the doctrine upon those points which we have before
 laid down.

St. Alban's.
1595.

In an action of false imprisonment brought by Clark
 against Gape,† the defendant justified the imprisonment,
 because King Edward VI. incorporated the town of St.
 Alban's, by the name of mayor, &c.; and granted to them
 to make ordinances; and showed that the queen appointed
 the term to be kept there. And that they, with the assent
 of the plaintiff, and other burgesses, did assess a sum on
 Inhabitants *every inhabitant*, for the charges in erecting the courts
 there: and ordained, that if any should refuse to pay,
 &c. that he should be imprisoned, &c. And because the
 plaintiff being a *burgess*, &c. refused to pay, &c. he as
 mayor justified. And it was adjudged no plea. For this
 ordinance is against the statute of Magna Charta, cap. 29:
 which act hath been confirmed and established above thirty
 times. And the plaintiff's assent cannot alter the law in such
 case. But it was resolved, that they might have inflicted a
 reasonable penalty, but not imprisonment; which penalty

* Stritton and Brown's case, 3 Leon. 208. S. C. Cro. Eliz. 204.

† 5 Coke, 64.

they might limit to be levied by distress; or for which an Elizabeth. action of debt lay. And the plaintiff had judgment.

In a case of assault in the 30th of Elizabeth,* it was Salisbury. pleaded that *Salisbury* was an ancient city, and that within 1587. the same there was this custom—that if any man made an affray, and assaulted any officer of the city, or any other person, if he upon whom the assault was made complained to the mayor, he might send for him who made the affray, and make him answer to it. But it was said, it is not shown that “*they of Salisbury*” have a *corporation*, so as that they might be enabled to prescribe.

Fleetwood, recorder of London.—If the statute of Magna Charta should be observed, no felon is duly handled at Newgate; and here we have not pleaded by way of prescription, but of *usage; consuetudo and usage are all one*; and Usage. afterwards judgment was given for the plaintiffs on this ground, amongst other, that the custom is too general.†

In Martin Van Henbeck’s case, 30th Elizabeth,‡ it is stated, 1587. that “*a steward of a leet* was presented, for that he had suffered many brewers and bakers, to bake and brew contrary to the assise.”

In the 28th of Elizabeth,§ in a replevin by Lawson against Hare, the defendant avowed for a *leet fee*:—and stated, that all those whose estate he hath in the hundred of *C.* have used to hold a *leet* once every year: and that at each time when such *leet* hath been holden, the *inhabitants* within the *leet* have used to pay to the lord of the *leet* 16*d.* for a *leet fee*, and that the lord has been used to distrain for Leet fee. the same. 1585.

In replevin in the 41st of Elizabeth,|| an avowry was made 1598. that the township was amerced in the *leet*, because they had Leet. not a pillory and tumbrill, and the bailiff distrained; but it was held, that a vill was not chargeable without special prescription to find pillory or tumbrill, but the lord of the *leet* is chargeable, and if he failed *his liberty was seizable*. And

* 1 Leon. 105, and 4 Leon. 149.

† See before, pp. 777, 1190.

‡ 2 Leon. 39.

§ 2 Leon. 74.

|| *Stevenson v. Scrogs, Moor, 607.*

Elizabeth. the bailiff, without a special warrant from the steward, cannot distrain for an amercement in a *leet*; and that things omitted to be presented in a *leet* should be *presented in the tourn of a sheriff*.

Sheriff's
tourn.
1599.
Villainage.

The doctrine of *villainage* was also in practice in this reign, for in the 42nd year there was a writ of error upon a judgment in *nativo habendo*.*

And in the same year it was agreed, "that if the lord maim his villain he is enfranchised."†

Monopolies.
1588.

In the 31st of Elizabeth, in an action upon the case,‡ the plaintiff declared, that, time out of mind, there had been a manor and a town called Tocester:—that they had been used to have a bakehouse, and a baker, to bake bread for all the *inhabitants* and passengers there—and that no person had ever used a bakehouse there, but by appointment of the lord of the manor; but that the defendant had done so, without any license.

It was urged for the plaintiff, that there were two points of *prescriptions*; *usage* and *reasonableness*: some prescriptions were against *strangers*—and then there ought to be *consideration* and *recompence*. Some prescriptions against *privies*, as between lord and tenant—then the tenure is sufficient.

Southampton.

For the defendant it was answered, that the prescription was against the liberty of the commonwealth. And that it was not reasonable, that such profits be restrained, and drawn from the public good, to the private commodity of any person. And a case was cited, in the ninth of Elizabeth, upon an information exhibited there by the burgesses of Southampton, "that the king had granted to them, that all the sweet wines brought within the realm, should be unladen at Southampton only." And it was agreed by Lord Wray, "that such a grant was not good, to deprive the commonwealth of such a benefit, and to appropriate that to one which might be profitable to many."

1589.
Church.

That the lands of the *church* still continued exempt from

* Cro. Eliz. 6.

† Noy's Reports, 171.

‡ 1 Leon. 142.

some public charges, may be seen by the following case, in *Elizabeth.*
the 32nd year of Elizabeth.* 1589.

One was assessed to 7*s.* for fifteens ; and upon refusal to pay it, the collector distrained his beasts, and sold them. It was shown by counsel, that the statute of the 29th of Elizabeth, which enacteth this fifteen, provides, that it should be levied of the moveable goods, &c., usually chargeable ; and that the cattle distrained were tempore districtionis upon the *glebe* land of a parsonage presentive, which he had on lease—which land is not chargeable usually to fifteens granted by the temporality, nor the chattels upon it. But it was the opinion of the whole court, *although the parson himself payeth tenths to the king*, yet the lay farmers shall pay fifteens, and his cattle are distrainable for it, even upon the glebe. Glebe.

A case relative to *disfranchisement* occurs in the 31st of Elizabeth,† upon a writ de homine replegiando by Samuel Starkey to the sheriffs of London. Who returned, that he was indicted de malâ famâ, et deceptione domini regis, with divers other general words, and that he had deceived J. S., a clothier, and that he was a common cozener ; and thereof being found guilty, judgment was given by the mayor and recorder, that he should be *disfranchised* of his freedom, and should be fined and imprisoned for a year ; and further said, that he had not paid his fine, nor was the year expired. *Cook.*—Such return has not been seen, and it is directly against the statute of Magna Charta. Disfranchisement. 1588.

The proper limits of the power incident to corporations, of *Bye-laws.* making *bye-laws*, may be collected from the following case,‡ in the 33rd year of Elizabeth ; in which the chamberlain of London brought an action of debt, in the guildhall, grounded on an act of common council, made by the mayor, aldermen, and *commonalty* of the city, at their common assembly, (which they make by custom, and which, amongst others, is confirmed by divers acts of Parliament,) by which it was ordained, that if any *citizen, freeman, or stranger*, within the 1590.

* 2 Leon. 146, Sted's Case. S. C. 3 Leon. 259.

† 4 Leon. 61, Starkey's Case.

‡ 5 Co. 63.

Elizabeth. city, put any broad cloth to sale before it be brought to
 1590. Blackwell Hall to be viewed and searched, so that it may

Blackwell Hall. appear to be saleable, and that hallage be paid for it, scil.

1*d.* for every cloth, that he shall forfeit for every cloth, 6*s.* 8*d.*

And that for such forfeiture, the *chamberlain* of the city of London should have an action of debt, &c. And because the defendants had broken the ordinance, the chamberlain of London brought an action for the penalty. And it was

Bye-laws. moved, that “*those of London*” could not make laws and ordinances to bind the king’s subjects, and principally *strangers*; for then they would have as high authority as an act of Parliament:—and 2. The said ordinance (as it was urged) was *against the law, and the freedom and liberty of the subject*, to compel him to bring his cloths to any one place. 3. The impost of 1*d.* for hallage, was a charge on the subject; and by the same reason that they may impose 1*d.*, they may impose 2*d.*, and so in infinity. And it was moved to have a procedendo. It appears, by many precedents, that it has been used within the city of London, *time out of mind*, for “*those of London*” to make ordinances for the good government of the citizens, &c., consonant to law and reason, which they call acts of common council. Also, all their customs are confirmed by divers acts of Parliament; and all such ordinances are allowed by the law, which are made for the due execution of the laws of the realm, for the well government of the body incorporate. And all others, which are contrary or repugnant to the laws and statutes of the realm, are void, and of no effect. And * as to such ordinances and bye-laws, these differences were observed:—the

Inhabitants *inhabitants* of a town, without any custom, may make ordinances or bye-laws for the reparation of the church—or a highway—or of any such thing, which is for the general good of the public; and in such case, the greater part shall bind the whole, without any custom.† But if it be for their own private profit, as for the well ordering of their common

* And see Leon. 264,—where it is said, “a corporation may make an act for the better execution of any law established at the common law; but new laws they cannot make.” See also 15 Hen. VII.—21 Hen. VII. 40—8 Edw. II. Lib. Ass. 413.

† Vide 44 Edw. III. 19.

of pasture, or the like, then, without a custom, they cannot make bye-laws;* and with one, the greater part shall not bind the less, unless it be warranted by it. For as custom creates them, so they ought to be warranted by it.† Also corporations cannot make ordinances or constitutions without a custom, or the king's charter‡—unless for things which concern the public good, as reparations of the church, or common highways, or the like.§

Elizabeth.

1590.

Custom.

Corporations.

And as to the case at bar, many statutes were made for the true making of woollen cloth, which is the principal commodity of this realm: and to the intent that those statutes might be the better executed without any deceit, this act of common council was made, that they should be brought to Blackwell Hall, as to a place public and known, to the intent they might be searched and viewed, if they were made according to the statutes. So the said ordinance being made for the better observation and execution of the laws, to prevent all frauds and falsities, was good, and allowable by the law. Also the assessing of the *ld.* for hallage was good, because it was *pro bono publico*; and it was competent and reasonable, having regard to the benefit which the subject enjoyed by the reason of the said ordinances; and such assessments being for the maintenance of the public good, and not *pro privato lucro*, were maintainable by the law; and it was not to be called a burden or charge to the subject, when he reaps a benefit by it. But it is like pontage, murage, toll, and the like, as appears in 13 Hen. IV., 14 b:—in which cases, the sum for reparations of bridges, walls, &c., ought to be so reasonable, that the subject shall have more benefit thereby than charge.

Woollen cloths.

Also the penalty inflicted on the offender, be he *citizen* or *stranger*, was lawful—the offence being committed within the city, and the sum being competent and proportional to

Penalty.

* And yet there are many such bye-laws, which have been made by the residents at the courts leet, and constantly acted upon.

† Vide 8 Edw. II. Assise, 412.

‡ That is—to bind strangers.

§ Vide 44 Edw. III. 19—8 Edw. II. Assise, 413—21 Edw. IV. 54—11 Hen. VII. 13—21 Hen. VII. 20 and 40—15 Eliz. Dyer, 322.

Elizabeth. the offence; and without a penalty, the ordinance would be
 1590. in vain. And the appointment of their chamberlain, being their public officer for debts, to bring the action of debt was good, and allowable by law:—and the ordinance being according to law, may be put in execution, without any other allowance, notwithstanding the statute of the 27th of Henry VII., chap. 7.

Judgment. And after great deliberation, *Wray*, chief justice, by the advice of the other justices, granted a *procedendo*.*

In the same case, as stated by another reporter, it was contended, that they could not make ordinances to bind the subjects, as an act of Parliament.

To which it was said, by *Fleetwood*, that the custom of the city was, that the mayor and aldermen, and four persons
Wards. chosen out of each *ward* by the *commonalty*, may make ordinances, which they call acts of common council, and they bind every *citizen* and *freeman*: and he said, that this act of common council is good, and according to the law, that is of common right. There are divers statutes made for the true making of cloth, and to take away the abuses and deceit of making of it. And this act of common council is for the well executing of those statutes. And I conceive there is a difference in making the laws by a *corporation*, who may make an act for the better executing of any law; but new laws they cannot make—as those of a town who used to have in common certain lands, they cannot make a bye-law, that such a one, in such a town, shall not have common there; but a bye-law, that none shall use his common but at such a time, is good.† A town had common of Turbary, in a marsh; and divers *inhabitants* of the town made trenches, by which they used to carry turfs out of the parish by boats, and sell them, to their great private profit, to the great grievance of the others—for which cause, it was provided, by common assent of the *freeholders* of the lord of the town, that
Bye-laws by freeholders. all the trenches should be stopped, so as from thenceforth no turfs be carried in boats by them. And it was holden,

* Vide 2 Edw. III. 7. John de Brittain's case. 3 Leon. 264.

† See 15 Hen. VII.—21 Hen. VII. 40—8 Edw. II.—Tit. Assise, 413.

that, *if the greater part of the commoners assent, it shall bind the others who have not assented.* And if such towns may make laws, a fortiori the city of London. Secondly, This law is good by *custom*, for they have *used* to make such acts and ordinances time out of mind, &c.; and those customs are confirmed by act of Parliament: and also they may appoint a penalty—for to what purpose otherwise should they make an act? Also this action is maintainable; for an amercement in a court baron, an action of debt lieth. *Gawdy*, chief justice, 44 Edw. III., 19. *Wray*.—There the ordinance made was to charge the inheritance, but here it is only to charge their goods; wherefore the *assent of the greater part is sufficient*:—and afterwards a procedendo was granted.

Elizabeth.
1590.

Custom.

With respect to the legal doctrines held at this period as to corporations, the following extracts will serve as examples.

It was stated,* “that it had been objected in case of a sole corporation, or body politic, created by charter or prescription, as bishop—parson—vicar—master of an hospital—that no chattel, either in action or possession, should go in succession; but the executors or administrators of the bishops, parsons, &c. should have them: for the heir of a private man could not have them; and succession in a body politic is inheritance in case of a body private. But otherwise it is in case of a corporation aggregate of many—as dean and chapter—mayor and commonalty—for there they in judgment of law, never die—and this was affirmed by the court, 8 Edward IV.—and 18th and 20 Edward IV.

Corpora-
tions.

Successors

In the 43d of Elizabeth, in a case respecting a devise to the poor people maintained in the *hospital* in the parish of St. Laurence in Reading; exception was taken that the poor were not capable by that name, for they were not a corporation: yet, because the plaintiff was capable to take lands in mortmain, and did govern the hospital, it was decreed, the defendant should assure the lands to the *mayor and burgesses* for the maintenance of the hospital.†

1600.

* Fulwood's case, 4 Co. 65.

† Tothill, p. 32, Mayor, &c. of Reading v. Lane.

Elizabeth.

1598.
Case of
Corpora-
tions.

In the 40th year of this reign, the most important case relative to corporations occurred, which has ever since, unjustifiably, been considered a leading authority on this subject, and has acquired the distinguishing name of "the Case of Corporations."*

The results from this case have been so extensive—and the mischiefs to which it has given birth so numerous and fundamental—that it is impossible to pass it by without particular notice. Especially as it affords a striking illustration in the fact of its existence, of how much importance these matters were considered at that time: and illustrates most distinctly the assertions we have before made; as well as the mode by which the usurpations we have deprecated were introduced.

Usage.

It affirms the authority of the select bodies—their power of making bye-laws—the binding nature of such bye-laws when actually made, or when proved by *usage*—and, above all, it establishes the dangerous doctrine of *usage, commencing within time of legal memory*, being evidence of right.

It should, however, be premised, that this *not being a decision of any of the courts of law*, but only an opinion given to the ~~king~~ in council;†—not open to a writ of error or appeal—could not, under any circumstances, be considered as a legal authority. And when its principles and doctrines are considered, without prejudice or undue bias, it will be found altogether unfit to be relied upon, although it has been frequently quoted as an authority.‡

It is as follows:—

In Michaelmas term, in the 40th year of this reign, at Serjeant's-inn, in Fleet-street, it was demanded of the chief justices, Popham and Anderson, Periam, chief baron, and

* 4 Co. 77.

† Reversal before the king's council of a judgment is of no effect; for they have nothing to do with civil causes, 1 Inst. c. 44—39 Edw. III., p. 14; and see also 7 Co. 44.

‡ But see *Rex v. Westwood*, where its authority was doubted. And Lord Kenyon, in some of the corporation cases in his time, intimated his opinion against bye-laws limiting the number of electors appointed by the charter, though made by the whole corporation.

the other justices, that as divers cities, boroughs, and towns were incorporated by charters, some by the name of "mayor and commonalty," or "mayor and burgesses," &c. or "bailiff and burgesses," &c. or "aldermen and burgesses," &c. or "provost," or "reeve and burgesses," or the like. And in the charters it is prescribed, that the mayor, bailiffs, aldermen, provosts, &c. shall be chosen by the commonalty or burgesses, &c., whether the *ancient and usual* elections of mayors, bailiffs, provosts, &c. by certain *selected number* of the principal of the *commonalty or burgesses*, commonly called "the common council"—or by such like name—and not in general by the *whole commonalty of burgesses*; nor by so many of them as would come to the election; were good in law: forasmuch as *by the words of charters the election should be indefinitely by the commonalty, or by the burgesses*, which is as much as to say, by *all* the commonalty, or *all* the burgesses, &c.? which question being of great importance and consequence, was referred by the lords and council to the justices, to know the law in this case. Because divers attempts were of late in divers corporations, contrary to the *ancient usage*, to make *popular* elections; and it was resolved by the justices, upon great deliberation and conference had amongst themselves, that such *ancient and usual* elections were good, and *well warranted by their charters*, and by the law also. For in every of their charters they have power given them to make laws, ordinances, and constitutions, for the better government and order of their cities or boroughs, &c.:—by force of which, and *for avoiding of popular confusion*, they, by their common assent, constitute and ordain, that the mayor or bailiff, or other principal officers, shall be elected by a selected number of the principal of the commonalty, or of the burgesses, as is aforesaid:—and prescribe also how such selected number shall be chosen. And such ordinance and constitution was resolved to be good and allowable, and agreeable with the law and their charters, *for avoiding of popular disorder and confusion*. And although now such constitution or ordi-

Elizabeth.

1598.

Ancient
and usual.Common
council.

Charters.

Bye-law.

Elizabeth. nance cannot be showed; yet it shall be presumed and intended, in respect of such special manner of *ancient* and 1598. *continual election* (which special election could not begin without common consent), that at first such ordinance or constitution was made:—such reverend respect the law attributes to *ancient* and *continual allowance and usage*, although it began within time of memory; *mos retinendus est fidelissimæ vetustatis; quæ præter consuetudinem et morem majorum fiunt, neque placent, neque recta videntur; et frequentia actûs multum operatur.*

Bye-law
presumed.

And according to this resolution the ancient and continual usages have been in *London, Norwich*, and other ancient cities and corporations: and God forbid they should be now *innovated or altered*; for many and great inconveniences will thereupon arise; all which the law has well prevented, as appears by this resolution.

Observations.

It should be observed, that this is the first case in point of date which occurs with respect to the incorporation of cities, boroughs, and towns in general; and after the numerous documents we have given upon this head, there can be no doubt but that the *general* incorporation of the cities and boroughs was an *innovation* of this reign.

The recital of this case seems to import as much.


And it is equally clear, as we have already shown by the charters we have quoted, that the queen had not by her royal grants, taken away from the burgesses at large the right of electing the municipal officers; and therefore it is truly stated in this case, “that it is in the charters prescribed, that the mayor, bailiffs, aldermen, provosts, &c. were to be chosen by the *commonalty* or *burgesses*.” And the question propounded is, “whether the *ancient* and *usual* elections of those officers by certain *selected members* of the principal of the commonalty or burgesses, commonly called ‘the common council,’ were good in law?”

But in truth the fact here assumed, that the *ancient* and *usual* elections were by the *select* number or “common council,”

is not correct; as is proved by the numerous instances we ^{Elizabeth.} have shown of elections by the whole body of the burgesses.* 1596.

Nor is there any pretence for saying, that the elections had been by the *select number*; excepting where they had been by the jury for the time being; or in some such body,—not electing by right, but by sufferance—being a constituted body for other purposes, and the other burgesses abstaining from attending: which is the case with reference to every individual who does not attend at an election. But it has never been contended—and if it were, it would offend the common sense of all mankind—that, because individuals occasionally absented themselves from an election, and allowed others to make it in their absence, that therefore they should lose the right altogether, and that it should be exclusively enjoyed by the smaller number.

This part of the question therefore wants the support of fact for its foundation; and of reason and principle to justify it.

The case properly admits, that, "*by the words of the charters, the election should be indefinitely by the commonalty or burgesses*;" and it justly adds, "*which is as much as to say, by all the commonalty, or all the burgesses*." 

Now, if this be so, it seems that either the doctrine must be admitted, that the words of the charter are not imperative (and then the principle must be abandoned, that the king alone can grant such charter, for if the words are not followed, it is no longer the king's charter)—or the election must be by the commonalty or burgesses according to the words.

The case then proceeds to state, "that there had been divers attempts of late to make popular elections contrary to the ancient usage." Under which pretence, of avoiding such elections; and upon the assumption of the unfounded fact, of the ancient usage, the erroneous conclusion appears to have been adopted, that these elections were warranted by their charters: whereas it is admitted in the case, that it was contrary to them: they, *by their words*, requiring the election to be made by the body at large.

But it is said, "that in every of their charters they have

* Vide ante, Leicester, Northampton, Winchester, &c.

Elizabeth. power given them to make bye-laws for the better govern-
1598. ment of the cities or boroughs."

It is however contrary to law—and would obviously be contrary to reason—that such a power of making bye-laws should be executed in a manner to authorize any thing contrary to the *words* of the charter:* and therefore that power is in fact limited by the *words*, and cannot go beyond them; so that, if it directs those elections to be by the *body at large*, no bye-law could give the exclusive power to the *select number*.

However the opinion given was contrary to this: and, as it is stated, upon the ground of "avoiding popular confusion," an expression, no doubt, borrowed from the preamble of the statute of Henry VI., which relates only to county elections.

It was said, that, "by force of the power given to them, they might, by common consent, ordain, that the mayor or bailiffs, or other principal officers, should be elected by a *selected number* of the principal of the commonalty, and might also prescribe how such selected numbers should be chosen; and that such ordinance would be good and agreeable to the law and their charters—repeating the ground for the avoiding of popular disorder and confusion.

But with submission, it might be asked, whether, if the burgesses had the power thus to alter the mode of election prescribed by the charter; why they might not direct the election to be made by the mayor or any one of the principal burgesses? Which would be so manifestly absurd, and so contrary to the charter, that it could not for a moment be maintained.

Or, if they could prescribe the mode how the select number should be chosen, they might direct a mode of selection entirely inconsistent with the charter; and if they might prescribe such a selection, they might in effect set aside the king's grant.

* No length of usage will establish a form of election contrary to the charter. *Rex v. Tomlyn*, Cas. Temp. Hardwicke, 316; *Rex v. Castle*, Andr. 124.—*Rex v. Tucker*, 1 Barnard. 27.—And a bye-law, which alters the constitution of the corporation, is bad. *Rex v. Cutbush*, 4 Bur. 2208.

In truth, it seems that this opinion must be accounted for Elizabeth. by the pressure of some temporary evil; which the suggestion of "avoiding popular disorder and confusion" appears to render highly probable; and the decision may be referable rather to expediency, than to law or reason.

If such an ordinance could have been legally made, it was not unreasonable, in order to support the *usage*, to infer, that it had, in fact, been made.

The exclamation at the close of the case, shows that it was decided under strong feelings of the time; particularly as it is added, that "many and great inconveniences would arise from setting aside those modes of election," which had been assumed to have been *ancient* and *usual*.

It now only remains, considering the great length to which the records of this reign have necessarily run, to state very succinctly a few documents of this period relative to Ireland, Scotland, and Wales.

IRELAND.

It is due to the memory of Queen Elizabeth to record, that it was in her reign the first effective steps were taken to give the English laws full force in Ireland.

James I. used his most zealous endeavours to complete that which his predecessor had begun; but before the reign of the queen, the position of the two countries, with reference to the application of their laws, was far from satisfactory.

But few records have been quoted relative to that country:—for although some have been preserved with much care, there is, generally speaking, a great deficiency; and they are neither of that antiquity, nor so numerous, as those which relate to England.

Previous to the reign of Henry II. there are in fact none. Nor should this be a ground of surprise, when it is recollected, that, in the early state of society in Ireland, property was so frequently subdivided, that records for the purpose of its transmission were less necessary.

Elizabeth. Henry II., on his arrival in Ireland, found the country divided into a multitude of petty states, connected together by no bond of political union.

He attempted to put the country upon some general system; and we find documents in the course of that reign which mention archbishops, bishops, sheriffs, ministers and justices.* A survey of the kingdom was made—and Giraldus Cambrensis, describes Ulster as containing 35 “CANTREDS;”† (a term we have seen before used in Wales;) Connaught, 30; Leinster, 31; Meath, 18; and Munster, 70.

The Irish princes accepting the English laws, swore to the king to preserve them.

King John also, by a writ to De Burgo, his lord justice,‡ directed him to summon all the archbishops, bishops, abbots, priors, earls, barons, knights, freeholders and sheriffs, to hear the laws and customs of England, which he had granted them, and to which they had sworn obedience; and that the same laws and customs should be proclaimed and observed in every county of Ireland.

County
palatines.

There were however at one period no less than eight county palatines§ in Ireland, whereby a great portion of the kingdom was exempted from the general jurisdiction: as the English lords, who possessed those counties, exercised *jura regalia* within them, and had their own chanceries, treasuries and exchequers, and offices of record belonging to each.

Towards the termination of the reign of Edward II., and the beginning of that of Edward III., the English settlers had become so degenerate, that they would not suffer their own, but only the Irish, laws to prevail in their territories; so that in the reigns of Henry VII. and Henry VIII. there were but four counties wherein the English laws were administered; and the crown possessed no regular revenues in Ireland before the time of Lord deputy St. Leger.||

Under these circumstances, it is not probable that many

* Egerton MSS. 212, 151.—Harris' History of Ireland.

† Vide Giraldus Cambrensis.

‡ Egerton MSS., 212.

§ Davis' Sup. p. 106. Gordon's Hist. of Ireland, vol. i. p. 175.

|| See Irish Statute, 10 Henry VII. cap. 4.

records would be found in Ireland. Until the reigns of the ^{Elizabeth.} Edwards, it may be said there are none; and from that time until the reign of James I.

The Parliament Rolls are still more defective, most of ^{Parliament Rolls.} them having been destroyed in St. Mary's Abbey.

STATUTES.

The Statutes commence with the reign of Henry II., and ^{Hen. II.} contain in that reign only five chapters: from thence there are none printed until the seventh of Henry VI.

In passing we may observe, that in the reign of Henry II. ^{Lodgings.} there is an Irish statute against great lords taking lodgings against the will of the people—a provision so common in the early English charters.

In the reign of Henry VI. we find that some provisions ^{Purveyors.} against the extortion of *purveyors* were enacted similar to those of England.

The whole of the statutes during the reign of Henry VI. ^{Hen. VI.} amount only to 36.

In the reign of Edward IV. there are only 23, which in- ^{Edw. IV.} clude provisions respecting constables in towns; and particularly one concerning the choosing of knights and burgesses ^{Knights.} for Parliament, directing that “no person shall be a knight “for a county unless he were *dwelling* within it, and might “dispend 40s. yearly. And none be a citizen unless *dwelling* ^{Citizen.} “within the city; nor burgesses in borough towns, unless “*dwelling* within the town.”

In the reign of Henry VII. there are 26 statutes. ^{Hen. VII.}

One providing that no Parliament should be holden in Ireland until the acts be certified into England; and the Parliament summoned under the great seal of England.

Another enacts that no *city* nor great town should admit any to be *alderman*, *juror* or *free-man*, but such as have been ‘prentice or continually *inhabiting* the town; and all acts and laws made in any of the cities or towns contrary to the king's prerogative, are declared to be void. <sup>Appren-
tice.
Inhabitants</sup>

Another states, that the *records* relative to the earldoms ^{Records.} of Marche—Ulster—lordships of Trim—and Connaught an-

Elizabeth. nexed to the crown, were sometimes remaining of record in the treasury of Trim, and were embezzled of late by divers persons, directs that proclamation should be made, that whosoever had any of the rolls, records or inquisitions, should deliver them to the lords of the council.

In Ireland as in England the statutes much increased in number and in length as the reigns advanced; and in the **Hen. VIII.** reign of Henry VIII. there were no less than 57 acts. One **Poyning's Act.** for the repeal of Poyning's Act—another declaring the effect of it.

Another for the introduction of the English order, habit, and language.

Another extending to Ireland the English act of the 28th **Vagabonds.** of Henry VIII., relative to vagabonds.

Another, qualifying the former statute, which made the Acts of Parliament void because knights and burgesses sat in them who did not *dwelt* in their respective districts, provides, that “the *knights, citizens and burgesses* should be “*resiant and dwelling* within the cities, boroughs, and towns “to which they might be chosen, and elected by the greater **Knight, &c.** “number of the *inhabitants* of the counties, cities, and towns **Inhabitants** “being present, under forfeiture of 100*l.*”

And another provides for the division of Meath into two shires.

Philip and Mary. In the reign of Philip and Mary there were 15 statutes, one declaring how Poyning's Act should be expounded.

Elizabeth. In this of Elizabeth there were 49 statutes: one of which provides that no bill shall be certified into England for repealing or suspending the statute passed in Poyning's time, before the bill be first agreed upon in a session of Parliament in Ireland.

Shires. Another for turning counties that are not shire grounds into shire grounds, for which purpose commissions are ordered to be issued.

Besides those we have specified, there were many statutes **Liveries.** in Ireland as in England against the giving of *liveries*, or having *retainers*. And in other respects the Irish statutes, in the most essential points, correspond with the English.

Many of the causes also which operated in England for Elizabeth. the destruction of records, had a still more decisive effect in Ireland—as the baronial feuds—the contests between the houses of York and Lancaster—and the courts being ambulatory from place to place.*

But the queen, in the 21st year of her reign, ordered Sir William Drury to arrange the records in the Birmingham tower; and appointed a keeper, with a salary. And it is apparent from the greater number of Chancery rolls extant in this reign than in any preceding, that more attention was paid to the records of Ireland by Queen Elizabeth, than had been by any of her predecessors.† 1579.

Notwithstanding, however, the mutilated nature of the Irish records, there still remain sufficient to show, that the laws of England, from the earliest times, began to spread themselves over that country.

Thus, in the 30th of Henry III., an ordinance declared, 1245.
“that for the common good of Ireland, and the union of the
“land, all the laws which were held in England were to be
“observed in Ireland, as King John had directed;” ‡ in
whose time, however, there were only 12 counties in Leinster
and Munster; viz. Dublin, Meath, Uriel, Kildare, Cather-
logh, Kilkenny, Wexford, Waterford, Cork, Kerry, Limerick,
and Tipperary; so that even at that period the common law
did not extend to all Ireland. But by the 33rd Henry VIII., 1541.

* In the reign of Edward V., the Common Pleas were held in Carlow, and the parliaments and terms in Kilkenny, Castledermot, Drogheda, and other places.—Harris' Hist. of Dublin, p. 40.

It is a singular fact, that the Common Pleas and Pleas of the Crown were not held before judges specially assigned to those courts, but before the chief governor of Ireland; and if he were otherwise engaged, before commissioners appointed by him; which, perhaps, may be the origin of the Court of King's Bench in England, exercising jurisdiction over the King's Bench in Ireland.

† Edward I. there is but	-	-	1	Henry VIII.	-	-	-	24
Edward II.	-	-	-	1	Edward VI.	-	-	8
Edward III.	-	-	-	8	Mary	-	-	8
Richard II.	-	-	-	8	Elizabeth	-	-	49
Henry IV.	-	-	-	6	James	-	-	47
Henry VI.	-	-	-	5				
Edward IV.	-	-	-	2				167

Egerton MSS. 212.

‡ Davies, Rep. p. 101.

Elizabeth. chap. 1, that king and his successors were declared to be kings of Ireland. And to the end that the law of England might have a free course through all the kingdom of Ireland, it was provided, in several Parliaments in the reign of Philip and Mary, and finally enacted in the 11th year of 1568. Queen Elizabeth, as we have observed before, that a commission should be awarded; and all the Irish counties which were not *shire-ground* before, should be divided and distinguished into several *counties* and *hundreds*: and sheriffs, coroners, justices of the peace, and other officers and ministers of the law of England, have been from time to time appointed in those counties by patents and commissions under the great seal of Ireland; and by these means, says Sir John Davies in his reports,* “the common law hath been communicated to all persons, and executed throughout all the kingdom of Ireland for several years.” All of which was fully confirmed by the general proclamation to that effect by James I.

Questions of taxation introduced considerable difficulties into the councils of Ireland in the reign of Queen Elizabeth, the people claiming the privileges of the English constitution, particularly that of not being taxed but by the great assembly in Parliament.

That the institutions of Ireland at this time were the same as those in England, particularly with respect to the *leets*, may be collected from the instructions for Sir Henry Walloppe, the under secretary at war in Ireland—Sir Valentine Browne—and the rest of the commissioners appointed to survey the lands of the rebels; in which, amongst other things, they are directed to inquire whether “her majesty may not do well to review the liberties of *leets* and *law-days*.”

And in the orders of the justices of the peace they are directed to hold their quarter sessions according to the laws and course used in England. And the justices and *Inhabitants* sheriffs are directed “to cause all the *inhabitants* within the shire between the age of 16 and 70, as well men as

“women, to be *booked* and *sworn* to their loyalty.” And Elizabeth.
this was to be specially inquired of in every sessions. Sworn.

That high and petty constables were to be chosen, who were to execute their office in all things according to the laws and ordinances established in England.

In the instructions also to Sir John Perrott, the deputy 1583.
in Ireland, it is directed, that “all who have functions,
“charges and governments, temporal or ecclesiastical,
“should be for the most part *commorant or resiant*, not Residence
“being absent above two months in every year.”

CHARTERS.

The *charters* which were granted in this reign to the boroughs in Ireland, likewise tend to show, that the boroughs continued in the same state as theretofore; the greater part of the charters being confirmations of former grants. Thus—

In the first year of her reign, Queen Elizabeth granted a charter to *Youghal*;^{*} reciting that of Richard III., already Youghal.
presented to the attention of the reader,[†] and confirming it 1556.
in every particular; with the grant in fee of all lands, &c. which the town held belonging to the crown.

The mayor, bailiffs, and citizens of *Waterford* also re- Waterford
ceived three charters in this reign,[‡] providing for the election of bailiffs—giving jurisdiction over real and personal actions—the goods of felons—and a *confirmation* of all former privileges.

This queen likewise granted a charter to *Limerick*, in the Limerick.
17th year of her reign,[§] which commences by reciting those previously given by Edward VI., Henry VII., Henry VI., Henry V., Henry IV., Edward III., and John—which latter granted the citizens all the liberties the city of Dublin enjoyed, with all other privileges they then possessed; that they should not plead without their walls, except pleas of external lands which do not belong to the hundred of the

^{*} Pat. 1 Eliz. p. 7.

[†] Ante, p. 1040, 1088.

[‡] Pat. 11 Eliz. p. 8; 16 Eliz. p. 10; 25 Eliz. p. 9.

[§] Pat. 17 Eliz. p. 7.

Elizabeth. city—nor make duel ; that they might purge themselves by the oaths of 40 men of the city, who should be **LAWFUL** ; that no one should take a *guest* by the authority of the marshal ; that they might have quittance of toll, &c. ; distrain their debtors ; that they should have a guild, as the merchants of Bristol had, with similar liberties ; and that the city should be held in *free burgage*, &c.

**Lawful
men.
Guests.**

**Free bur-
gage.
Cork.
1575.**

Commons. The queen, in the 18th year of her reign, also granted a charter to the citizens of *Cork**—*but not one of incorporation*. It commences with reciting, by *inspeximus*, all the previous charters ; and after confirming them, proceeds to recite, that at the petition of the mayor, bailiffs, and *commons*, she had granted to the mayor, bailiffs, and citizens, and their successors, that the mayor, recorder, and the four senior **Justices.** aldermen, should be *justices* of the peace—with powers to hear and determine all felonies, trespasses, &c., arising within the city.

That the mayor, bailiffs, citizens, and their successors, **Fines.** should have all fines and amerciaments from all or any of the citizens, and *inhabitants* there residing—the goods and chattels of felons and fugitives, &c.—and all other forfeitures concerning all and every the citizens, residing or *not residing* within the city, the suburbs, and precincts thereof.

That the mayor, bailiffs, citizens, and their successors, might have all lands, tenements, &c., provided they did not exceed 40*l.* per annum, being 20*l.* yearly towards the maintenance of the church of the Holy Trinity, and 20*l.* to the use of St. Peter's Church, notwithstanding the statute of mortmain.

Drogheda. The queen also, in the 23rd year of her reign, granted a charter to *Drogheda*,† confirming the former privileges ; but as it does not contain any provisions of a novel nature from those we have already given, we shall not trespass further upon the attention of the reader, by quoting it.

1580.

Waterford. At the petition of the mayor, bailiffs, and citizens of the city of *Waterford*,‡ the queen, in the 25th year of her reign,

1582.

* Pat. 18 Eliz. p. 8.

† Pat. 23 Eliz. p. 7.

‡ Pat. 25 Eliz. p. 9.

granted, that they should have all the lands which had been given to them by King John, or any other of her progenitors; that the city of Waterford should be a *county of itself*, in as ample a manner as had been granted to the city of Dublin. Elizabeth.
County of
itself.

That the mayor, bailiffs, and citizens of the city, should be a body *corporate* and politic, of a mayor, two sheriffs, and citizens of the county of the city, &c. That the *sheriffs* should be elected in the same manner as the bailiffs had been; and that they should have the same powers, &c. That the mayor and sheriffs should have jurisdiction over all suits, personal and real. That neither the mayor, sheriffs, nor citizens, should be impleaded before, or molested by any other justice, or minister, &c., whatsoever. A general confirmation of all previous charters and customs concludes the grant. Corporate.
Sheriffs.
Exclusive
jurisdic-
tion.

Dublin also obtained a confirmation, in the 24th year of Elizabeth, of the charter of Edward VI., with an extensive admiralty jurisdiction.* Dublin.
1581.

And *Kinsale* likewise received, at the same time, a renewal of its previous franchises. Kinsale.

In the 42nd of Elizabeth, there is a document, from which it appears, that *Kinsale* had, at that time, a *præpositus*, or *portreeve*; inasmuch as Giraldus de Courcey, Baron and Lord of *Kinsale*, granted an exemption to Robert Myaghe, of Cork, that he should not serve the office of "*præpositus*," commonly called "*portreeve*." 1559.
Portreeve.

We have seen above, that *Limerick* was to be held in *free burgage*, as the boroughs in England; other public documents in Ireland show, that many of the boroughs were held in the same manner. Burgage
tenure.

Thus, in an inquisition, in the third year of Queen Elizabeth, taken at *Dublin*, before the barons of the Exchequer, relative to the town of *Navan*, which is said to have been a borough by prescription, returning members to Parliament, and incorporated, it was stated, that Thomas de Anguto, alias Nangell, late of *Ardsallagh*, in the county of *Middlesex*, Navan.
1560.

* Pat. p. 4.

Elizabeth. knight, Baron of Navan, was seised in his demesne, as of fee tail, to him and the heirs of his body begotten, of one castle, &c., in his manor of Navan—and of the custom of the market of the town of Navan, and other customs there—

Burgages. and of the chief rent, beyond divers *burgages* in the town.

Feddart.
1576. In the 18th of Queen Elizabeth, by an inquisition taken at *Feddart* in the county of Tipperary, the jury found that the town is an old *borough*, and an *ancient corporation*,* of a provost, his brethren, and the commonalty. That William Corrock was seised of six houses within the town; and that he had, without license of the king, leased to the provost, brethren, and other burgesses, and their successors for ever, the said six messuages, for the use and support of a priest or chaplain in the church of St. John, of Feddart, which messuages are to belong to the king, by virtue of the statute of mortmain.

Cashell. There is a similar inquisition as to the city of *Cashell*, in the same year. And in 1578 there is another to the same effect, as to that place; from which it appears, the lands of Cashell were held in *free burgage*.

1569. Notwithstanding the queen had in England granted so many charters of incorporation, in a letter which she sent to Ireland, in the 11th year of her reign,† her majesty speaks of a dislike to them. For, after referring to the rebellion in the west, and the guarding of the English Pale towards the north, the letter proceeds thus as to Philipstown and Maryborough.—

“We perceive that you think it needful to have, in either of
“the counties of Leix and Offaly, one town incorporate, and
“*though generally we mislike of incorporations*, because of the
“daily abuses therein committed by the head rulers; yet upon

* It has been shown that these assertions, with respect to the charters of England, in the reign of Elizabeth, were *destitute of foundation*—and the same observations apply, with equal force, to those of Ireland.

† From a valuable collection of original letters, in the possession of Viscount Kingsborough, (who kindly communicated their contents,) bearing the sign manual of Elizabeth, and addressed to Sir Henry Sidney, Lord Deputy of Ireland; between the years 1565 and 1570.

“your earnest motion, and upon trust that you will use all Elizabeth.
 “good means and devices that the abuses may be avoided,
 “we are pleased to authorize you to devise by the advice of
 “your learned counsel there some convenient grant for the
 “same, following therein the example of some other town
 “corporate in that realm, that is best and most orderly
 “governed; and for perfecting the same, we will that our
 “chancellor there shall in our name seal the said grant so
 “being advisedly made.”

It is just possible that these complaints which are made of Case of
corporations.
 the conduct of the corporations to which the queen at the
 beginning of her reign was so much disposed,* was the
 occasion of the opinion of the judges being obtained “that
 “elections ought to be made by the select bodies of corpora-
 “tions, for the purpose of preventing popular disorder and
 “confusion.”†

Notwithstanding all the efforts which the queen had made
 to secure her influence in the House of Commons,‡ as well by
 summoning new places,§ as resummoning some ancient bo-
 roughs,|| her majesty still found a difficulty in forwarding the
 measures necessary for the welfare of the state, and seems
 to have felt a strong disinclination to encounter again the
 embarrassments thrown in her way by the Parliament.

Thus in another letter of the queen,¶ in the ninth year of her 1566.
 reign, dated from the palace at Westminster, referring to
 letters which had been sent by the lord deputy from Ireland
 respecting many important public and private matters—the
 queen answers to them:—

* See before, *Case of Corporations*, p. 1448 et seq.

† Vide etiam, ante, p. 1440.

‡ It appears from the Clarendon Papers, that five candidates were nominated by the court to each borough; and three to each county; and by the sheriff's authority, the members were chosen from amongst those nominees.

§ The queen, in a charter to Carrickfergus, grants, that the burgesses should return two members to her Parliaments in Ireland; and that because Edward Waterhouse was secretary to her lord deputy in Ireland, and had supplicated her, so she granted that he should be free of the corporation, and that he should be returned as one of the burgesses for that town to every Parliament of her, her heirs and successors, within Ireland, from time to time to be held.

|| Vide ante.

¶ Kingsborough MSS. No. 10.

Elizabeth. "First, when we understand you are desirous to have authority to call a Parliament, the rather for the renewing of our subsidy than to be newly granted for some years, as is then accustomed, before we would have assented thereunto, we could have been contented to have had advertisement from you what other matters you thought meet to be concluded on in the same, for the benefit of our service; for except the same *might appear very necessary, we have* small disposition to assent to any Parliament; nevertheless when we call to remembrance the ancient manner of that our realm, that *no manner of thing there ought to be concluded or treated upon, but such as we shall first understand from you, and consent thereunto ourself*, and consequently return the same under our great seal of this our realm of England, we are the better minded to assent to this your request, and we authorize you to devise with our council there, of such things as may appear beneficial for us, and our realm; and if you think good also to devise besides this ordinary subsidy, that is usually granted here, we might have some greater aid this next year for reformation of Ulster."

Parliament.

The letter then continues with directions as to the Scotch leader Oog, and the anxiety to exclude Scotchmen from settling in Ireland, and some other matters; after which succeeds the following direction as to Maryborough and Philipstown.

"We do allow your request for the making of the two principal market towns in Leix and Offaly, and do give you authority to make grants, and to our chancellor to pass the same under our great seal, in like reasonable manner as is used *in other like places within our English counties*."*

570. In another letter in the same collection, dated from Hampton Court, in the 12th year of the reign, the tenants of Leix and Offaly are directed not to be allowed to have their estates in reversion, but that they may make leases of them for terms

* This letter confirms what we have already seen, as to the charters in England, that as the manifest intention of the crown, from the earliest times, was to have all the privileges of the boroughs alike; so here the queen expressly directs, that these two newly created Irish towns should be on the same footing as those in England.

of 21 years, and the queen adds, "we would have good regard ^{Elizabeth.} had "that the *inhabitants* there do not engross many farms ^{Inhabitants} "into few hands, whereby hospitality must decay."

After some other intervening topics, the queen directs that Lord Ormond should have regard that—"the lands and "territories which he hath in the right of the late abbey of "Leix, might be better *inhabited* and peopled;" so that it ^{Inhabited.} fully appears the intention of the queen was on this, as on other occasions, and adopting the policy which her predecessors had always pursued, that the privileges granted to the towns should be for the purpose of their being *better inhabited*; which seems to have been the object of all the grants of this description.

In the eighth year of this reign, there are some bye-laws ^{1566.} relative to the corporation of Irish towns, regulating the apparel of the *inhabitants*; and in the same book are the proceedings of the *doer hundreds* held at this time, in which the *portreeve*, burgesses, and *commons* are mentioned.

The dearth of documents relative to Ireland in this country, obliges us for the present to close the collection of records relative to that country at this important period of our history; at a future time more light may be thrown upon this subject, as many materials now scattered in almost every part of the world,* may again be collected for the information and benefit of the country; much will probably be effected in illustrating the affairs of Ireland by the publication of the State Papers of the reign of Henry VIII., which may shortly be expected to appear under the direction of a commission established by the Duke of Wellington's administration; in which the most important historical documents, from the State Paper Office, Chapter House, Lambeth Library, and British Museum, will be embraced.

* The libraries in France, Spain, Italy, Austria, and Denmark, possess many curious Irish historical papers; a bundle of which were discovered not long since in one of the islands of the Archipelago; and Mr. Crofton Croker has in his possession at the present moment, a letter of an Irish Jesuit, written in the time of Charles I., which was picked up by one of the surveying ships in an island of the Pacific.

Elizabeth.

SCOTLAND.

The length of our extracts for this reign, compels us to conclude with a mere enumeration of the charters of Scotland ;
 1591. and with shortly observing, that in the 33rd year of the reign of Queen Elizabeth, there was a charter granted to *Inverness*, which speaks of the burgesses *actually dwelling* in the borough ; and in the spirit of the decision of the judges in the corporation case, recites the contentions which had arisen in consequence of the multitude of the electors.

In this, as in other respects, Scotland seems to have been assimilated to England at this period, as it had been theretofore ; and its own boroughs and institutions continued in the same form as they ever had been.

1581. In the 23rd of Queen Elizabeth, there was a grant to the borough of *Baaf* by James, to the provost, bailiffs, and commonalty.

1583. In the 25th of Elizabeth, another by the same king to *Anstruther Easter*, to the *natives* and *inhabitants* of the borough.

1584. And in the 26th year of the reign, there was a grant of a charter of confirmation by James of Scotland, to the borough
 Rothsay. of *Rothsay*, in the same form as those in England, the grant being to the provosts, bailiffs and *commonalty*, at the request of the "*burgesses AND inhabitants*."

1585. And in the 27th of Elizabeth, another grant by King James to *Brentisland*, to the provost, bailiffs and *commonalty*.

1587. Another by the same king in the 29th of Elizabeth, to *Anstruther, Wester*, " to the *natives and inhabitants* of the borough."

In the 29th of Elizabeth, to *Dingwall*, which confirms the charter of Alexander, to the *burgesses AND inhabitants*.

1588. Another in the 30th of Elizabeth, by the same king, to the bailiffs and burgesses of *Culross*, and to the *inhabitants*, free-men and burgesses.

And also another to the "*burgesses and commonalty of Baaff*."

Another of the 31st of Elizabeth, to the *free inhabitants* and

burgesses of Wick; and in the same year, to the burgesses Elizabeth. and inhabitants of *Naan*.

Another in the 34th of Elizabeth, to the provost, bailiffs, 1592.
free *burgesses* and *inhabitants* of the borough of *Baaff*; and
another to the *burgesses* AND *inhabitants* of *Fortrose*, con-
firming a charter by Alexander and James II.

In the 36th of Elizabeth, to the provost, bailiffs, burgesses, 1594.
and *commonalty* of *Elgin*.

In the 37th of Elizabeth, to the burgesses of *Inverber-* 1595.
bick.

In the 40th of Elizabeth, another to the burgesses of *In-* 1596.
verkeithing; *Sanguar*; and *Arbroath*.

WALES.

The same observation made with respect to Scotland, will
apply equally to Wales. The queen, availing herself of the
statute made in the 13th year of her reign, giving the same
effect to the exemplifications of the charters, as to the original,
granted exemplifications of many to the Welsh boroughs,
particularly Cardiff, and caused them to be enrolled according Cardiff.
to the statute.

CONCLUSION.

Thus we have seen Queen Elizabeth, during her long
and important reign, using the greatest efforts to secure an
influence in Parliament:—probably the only means she pos-
sessed of moderating the turbulent feelings which had arisen
from the change in the minds of the people, recently absolved
from the restraints and darkness of superstition.

Henry VIII. began to re-summon ancient boroughs long
fallen into decay.

Queen Mary followed the same course; but Queen Eliza-
beth, ~~as we have seen~~, extended that measure, as well as the
summoning of new places, much beyond what her predeces-
sors had attempted.

Nor were her endeavours in this respect, unsuccessful; for
in the boroughs which the queen summoned, we have seen
that usurpation, and direct influence, soon began to assume

Elizabeth. the sway : and the intervention of the select bodies, completed that which the queen had originated.

These proceedings however, like all of the same description, were not likely to pass without some attendant difficulties.

The increase of the number of members, though it added at first to the number of her adherents, increased also the number of those who were to be controlled ; and hence we find after all the queen's efforts, her majesty experienced great difficulty in managing the Parliament ; and did not disguise her disinclination to summon it.

So also the endeavour to place the governing power in the boroughs, in the hands of the exclusive select bodies, necessarily created an inclination to resistance in the greater number, who were excluded :—and the power which was given, created the necessity for its continuance and extension.

These conflicting circumstances produced the plausible justification for the opinion of the judges, delivered to the council in the corporation case ;—by which was laid the foundation of many of those abuses that have since arisen ; and which had not only their origin in that indefensible opinion, but have also unfortunately since been supported and justified by that authority.

We have noted, both in the decisions of Parliament, and also in some instances of the courts of law, the progress of those abuses. It is so far a melancholy prospect to the constitutional reader,—to observe the neglect and gradual obscurity into which the best principles of our constitution were thrown,—to mark the decay of the most valuable and simple parts of our municipal institutions,—and to witness the law bending from its direct course to support the gradual increase of abuse.

But it is still a consolation to trace through that web which artifice and chicanery has woven—the bright thread of our ancient law still perfect and unbroken—and also apparent in every part of the complicated mixture. And notwithstanding the load of usurpation heaped upon our ancient municipal institutions, still the foundations continue entire : the original

forms and principles of the law, serving as clues to unravel Elizabeth. the maze in which we should otherwise be bewildered. So that by these means, extricating ourselves from the intricacies of the corporate doctrines—heedless of the strange jargon in which they have been involved, we are enabled still to approach the ancient fabric of our constitution, to admire its simple structure, and to mark the practical wisdom of our earliest ancestors in the institution of the *court leet*:—to discover the useful result of it, in the plain doctrine, that the citizens and burgesses of all the cities and boroughs were the *real inhabitants*—as householders occupying their dwellings—bearing all municipal burdens, pecuniary and personal—sworn to their allegiance to the king and the law—and enrolled and recorded as such, for the purpose of securing their own rights, and publicly denoting themselves to their neighbours.

Such was the system of our Saxon ancestors. It survived the Conquest—it continued during the struggles of the feudal barons—it withstood the shock of the conflicts between the houses of York and Lancaster—it continued with the Tudors—it remained after the Reformation—it outlived even the innovations during the reign of Queen Elizabeth.

END OF VOL. II.





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